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Supreme Court of the United States

OCTOBER TERM, 1951

No. 643

RALPH SPELLER, PETITIONER,

vs.

ROBERT A. ALLEN, WARDEN, CENTRAL PRISON
OF NORTH CAROLINA, RALEIGH, NORTH CARO-
LINA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 31, 1951

CERTIORARI GRANTED MARCH 10, 1952

SUPREME COURT OF THE UNITED STATES

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**IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA**

RALEIGH SPELLER, Petitioner,

vs.

**J. P. CRAWFORD, Warden, Central Prison of the State of
North Carolina, Raleigh, North Carolina, Respondent**

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 28,
1950

To the District Court of the United States for the Eastern
District of North Carolina:

The petitioner, Raleigh Speller, respectfully shows unto
the Court:

1. That he is a citizen of the United States of America and
of the State of North Carolina, and is a member of the Negro
race.

2. That he is at the present time unjustly and unlawfully
detained and imprisoned at the Central Prison of the State
of North Carolina, in Raleigh, North Carolina, by virtue
of a judgment and sentence of death by asphyxiation pro-
nounced upon him by the Superior Court of Bertie County,
North Carolina on the 5th day of September 1949, upon
conviction of the crime of rape.

Petitioner avers that he is not guilty of the offense for
which he was tried, convicted and is presently detained by
the respondent in the death house of the Central Prison of
the State of North Carolina awaiting the execution of sen-
tence of death by asphyxiation on the 3rd day of November,
1950, and that the said imprisonment, restraint, and sentence
are illegal and void, in that during the trial of petitioner be-
fore the Superior Court of Bertie County petitioner was
denied equal protection of the laws, in violation of the
Fourteenth Amendment to the United States Constitution.

3. That in order that this Court may fully appreciate the
grounds for the instant petition, petitioner will set forth

herein the circumstances leading up to the instant petition [fol. 7] and then will set forth the specific respect in which he alleges his rights under the Fourteenth Amendment have been so violated as to render his conviction and the judgment and sentence passed thereupon null and void.

Your petitioner, Raleigh Speller, an illiterate and feeble-minded Negro of about 46 years of age, has been thrice tried and convicted in the Superior Court of Bertie County, North Carolina, of assaulting and raping a white woman named Mrs. Aubrey Davis, who was about 50 years of age. The crime was allegedly committed on the 18 day of July 1947, and an indictment by a grand jury of Bertie County at the August, 1947 term of the Bertie County Superior Court, and his subsequent trial and conviction were summarily reversed and set aside by the Supreme Court of North Carolina (*State vs. Raleigh Speller*, 229 N. C. 67, 47 S. E. (2d) 537) for denial by the trial Court of petitioner's motion to quash the bill of indictment against him and to set aside the array of petit juries, on the grounds of discriminatory exclusion of Negroes from a grand and petit juries in Bertie County. The petitioner was subsequently indicted at the August, 1948 Term of the Superior Court of Bertie County by a grand jury, two members of which were Negroes. When petitioner's case came on for trial upon the latter said indictment, at the November, 1948 Term of said Court, the trial judge finding that there were probable grounds to believe that a fair and impartial jury could not be obtained from Bertie County, ordered a special venire from Warren County, a County in the same Judicial District as Bertie County, to try said case. Petitioner thereafter timely moved that the entire array of special veniremen from Warren County be set aside, for that Negro citizens were, solely on account of race, arbitrarily and systematically discriminated against in the preparation of jury lists in Warren County. The trial judge denied the last motion, and on appeal of this cause for the second time to the Supreme Court of North Carolina, the latter Court again reversed the conviction and sentence of petitioner. (*State vs. Raleigh Speller*, 230 N. C. 345, 53 S. E. (2d) 294.) Thereafter, petitioner came on for trial a third time in the Superior Court of Bertie County, at the August, 1949 Term of said Court, upon the

same bill of indictment found at the August, 1948 term of said Court. Prior to said latter trial, the then presiding judge, upon motion of the petitioner that because of the notoriety of this case in and around Bertie County, an impartial jury could not be obtained therefrom, ordered a [fol. 8] special venire to be drawn from Vance County, a County in the same Judicial District as Bertie County, and the most remote County in said District, to try petitioner. Thereafter, the petitioner timely moved the Court to set aside the entire array of special veniremen called from Vance County, for that the jury commissioners of said County had, pursuant to a long and continuous practice, discriminated against Negroes in the selection of juries, solely on account of race and/or color. The trial judge denied the latter motion and the petitioner was subsequently convicted of the capital crime of rape, without recommendation of mercy, and the sentence imposed upon him was that of death by asphyxiation. On petitioner's appeal to the Supreme Court of North Carolina from this latter conviction and sentence, the same were upheld (231 N. C. 549, 57 S. E. (2d) 759).

The evidence adduced by the State during the three trials of petitioner hereinbefore referred to, tended to show that on Friday night, July 18, 1947, the prosecuting witness Mrs. Aubrey Davis, was preparing to retire around 10:30 p.m. Mr. Davis, her husband, who is deaf, had retired about a half an hour or forty-five minutes prior to that time. Glad in a night gown, stepins and a pair of slip-on shoes, Mrs. Davis went to the screen door at the end of her back hall, which opened on back porch, to see if it was locked. Finding the screen door unlocked, and the latch bent so that it would not hook, Mrs. Davis stepped out on the back porch to get a hammer which was lying on a table on the porch which she used to straighten the latch on the screen door. Stepping back out on the porch to put the hammer back on the table, Mrs. Davis was grabbed by someone whom she described to be a light-complexioned colored man, who suddenly dashed up on the porch from a hiding place in the shadows at the edge of her house. The man clinched Mrs. Davis in his embrace, dragged her from the porch out into the yard a few feet from the porch, and there assaulted her. Sometime

during the course of the assault the prosecutrix lost consciousness. Regaining consciousness after the lapse of an indefinite period of time, prosecutrix made an alarm to which neighbors and officers of the law responded. Thereafter, without any description from the prosecuting witness of how her assailant looked, other than her statement that he was a light-complexioned colored man, the police picked up the petitioner at a little roadside inn, located approximately 600 feet from the scene of the alleged crime, and within forty-five or fifty minutes after the commission of the [fol. 9] alleged crime, because the defendant, who had been drinking, was perspiring (in the month of July) and looked suspicious. Upon trial the petitioner was represented by the State to be the light-complexioned man who committed the alleged crime, and the jury upon this representation and the evidence introduced by the State, convicted petitioner of the crime with which he was charged.

During the first and third trials, petitioner introduced no evidence in his behalf, choosing rather to rely upon what he considered to be the weakness of the State's case and errors in law committed during the course of his trial. In the second trial, however, petitioner introduced evidence, through his own testimony, and that of five other disinterested witnesses, which tended to establish his presence at a place other than that at which the crime herein involved was allegedly committed, and at the time of its commission.

4. That upon the affirming by the Supreme Court of North Carolina of his third conviction and sentence by the Superior Court of Bertie County, petitioner applied to the Supreme Court of the United States for a writ of certiorari to review the decision of the Supreme Court of North Carolina. On the 9th day of October, 1950 the Supreme Court of the United States denied petitioner's application for said writ.

Petitioner now turns to the respect in which he claims that his conviction and the judgment and sentence passed thereupon are illegal, null and void.

Petitioner contends that he has been deprived of equal protection of the laws by the discriminatory and arbitrary exclusion of Negroes from petit juries in Vance County, whence come the jury that tried him, solely and wholly for reasons of race or color. Such being the case, petitioner

contends, therefore, that his conviction, judgment, and sentence are null and void, and that therefore, the imprisonment and restraint of petitioner, pursuant to said conviction, judgment and sentence, is illegal.

The rule that in the trial and conviction of Negro defendants charged with crime, the exclusion of members of said defendant's race from grand and/or petit juries by jury commissioners over a long period of years, solely on the bases of race and color, is a denial to such defendants of equal protection of the laws, is so notorious as to make unnecessary the citation of authority. The issue in each case, therefore, resolves itself into a determination from the facts [fol. 10] in the case of whether or not the discriminatory exclusion alleged exists. Accordingly, the petitioner at this point directs the Court's attention to the facts in his case.

It can be singularly noted from the record in this cause that of the sixteen or more witnesses introduced both by the defendant and the State on the trial of the issue raised by defendant's motion challenging the array of petit jurors, everyone of said witnesses testified that prior to the calling of the special venire of 100 jurors to serve in this cause, in which the names of about six or seven Negroes were included, for a period of as far back as 31 years or more no Negro had ever been summoned to serve, or had ever served on either a petit or grand jury in Vance County, from which County came the jury that tried and convicted this defendant. Some of the pertinent testimony on this issue is the following:

F. H. Ellington, Chairman of the Board of Commissioners of Vance County, testified:

"I have lived in Vance County since 1915, that is, about 34 years, and during that 34 years I have never known a Negro to be called for jury, grand or petit."
(R. p. 16)

H. M. Robinson, Clerk to the Board of Commissioners of Vance County for the past 19 years, testified:

"As Clerk to the Board I am present when persons are drawn for jury duty in Vance County; I don't know when Negroes were drawn for jury duty in Vance

County; I write down the names they read to me; I do not know whether any Negroes' names were drawn for jury duty during those 18 years." (R. p. 18)

E. A. Cottrell, Sheriff of Vance County, testified:

"I have been the Sheriff of Vance County for 7 years and have lived in the County all my life. As the Sheriff of my County, summoning of the jurors comes under my supervision. During my 7 years as Sheriff no Negroes have been drawn from the jury box to serve on the jury, and I do not know of any colored people summoned for jury duty." (R. p. 23)

L. B. Faulkner, Deputy Sheriff of Vance County, testified on cross-examination by defendant:

"I have been Sheriff almost 7 years, and I have summoned jurors before this time, but I have never summoned Negroes before this time." (R. p. 32)

Ed Young, witness for defendant, testified, in substance, [fol. 11] that he was 70 years of age, had lived in Vance County all of that time, and that for the past 25 or 30 years he had never known a colored person to be called for jury duty; that further back than 25 or 30 years his father served on the jury, but since that time he had not seen any colored person serve. (R. pp. 24-25)

Rev. Thomas J. Johnson, witness for defendant, testified, in substance that he had lived in Henderson 40 years; that he had attended court in Vance County for the past several years; that he had never seen a Negro serve on a jury in Vance County; that he had never known a Negro to be called for jury duty in Vance County; that he went as far as the 8th grade in school; that he had never been called for jury duty. (R. 26)

William M. Stamper, witness for defendant, testified, in substance, that he was born in Vance County 63 years ago and had been residing there permanently for the past 18 years; that he is a retired United States Army man; that he went to the 7th grade in school and could read and write; that during the past 18 years he has attended Court in Vance County; that he had never known any colored person

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to be summoned for jury duty prior to the summoning of the instant special venire; that he had never been called for jury duty. (R. p. 27)

Frank M. Dorsey, Vance County Tax Collector, testified:

"I am the County Tax Collector for Vance County and have had this position since 1937 . . . I have lived in Vance County for 32 or 33 years, and I haven't ever known Negroes to be summoned for jury duty." (R. p. 29)

G. W. Knott, member of the Board of Commissioners of Vance County, testified on cross-examination by petitioner:

"I have lived in Vance County for 49 years, and I do not know of any colored people who have been called prior to this special venire." (R. p. 34)

Mark C. Woodliff, member of the Board of Commissioners of Vance County, testified on cross-examination by petitioner:

"I have lived in Vance County all of my life, about 52 years, and I have never seen colored people serving on juries . . . I have never known a Negro to serve on jury or be summoned for jury duty." (R. p. 36)

W. H. Blacknall, member of the Board of Commissioners of Vance County, testified on cross-examination by defendant:

"I have lived in Vance County for 46 years, and, I have never known Negroes to be drawn for jury duty [fol. 12] or ever served on any jury in this County." (R. p. 38)

It is significant, and, it is submitted, trustworthily indicative of the true facts in the case, that on the day following the drawing of the special venire to serve in this case, in the office of the Clerk of the Vance County Superior Court, in Henderson, the Henderson (N. C.) Daily Dispatch, in its Tuesday, August 30, 1949 issue, on page 3, Column 5, in announcing the drawing of the special venire from Vance County to serve in this case, stated that this was "the first

time in half a century Negroes have been selected for jury service from this county." Henry B. Dennis, editor of the Henderson (N. C.) Daily Dispatch, called as a witness for petitioner, in connection with his motion challenging the array, testified:

"I live in Vance County and have lived there lack about a few months of being 35 years. I am editor of the Henderson Daily Dispatch and have been for the past 35 years, and during this time I have never known Negroes to serve on the juries in Vance County, but I haven't been present to every trial held in this County. I am accustomed to list the jurors in my paper every time they have a term of court, and I can't say for sure that I have printed names of colored persons; I don't recall, but I have not paid any particular attention to it. I did not say I did not know of any being called; I do not know of any having served, that is, prior to this special venire drawn." (R. p. 39)

It is unmistakably clear from the foregoing testimony, which was elicited from witnesses both for petitioner and the State, and which is typical of all of the testimony on the point, that up until the calling of the special venire in this case, for a period from 30 to 50 years no Negro had ever been summoned or had ever served on a grand or petit jury in Vance County. The importance of this testimony is emphasized and the case for petitioner is immeasurably borne out by the revelation in the record that during the past 15 years alone some three thousand seven hundred forty-five persons have been summoned for jury duty in Vance County. (R. pp. 18, 40-41) and not a Negro was among them.

The United States Census for 1940 discloses that the population of Vance County consisted of 15,966 white persons and 13,958 Negroes, the Negro population comprising 46.6% of the total population. According to the testimony in the Record, Negroes comprised approximately one-third of the taxpayers in Vance County (R. p. 29), from which list persons are drawn for jury duty. Aside from the fact that the foregoing proportion of Negroes has never been even remotely reflected in the proportion of persons sum-

[fol. 13] moned for jury duty in Vance County, the undisputed testimony in this case shows that prior to the summoning of the special venire in this cause, for more than fifty years no Negroes had ever been summoned for grand or petit jury service in Vance County.

Despite the claim of the jury commissioners of Vance County during the course of the taking of evidence on this issue that they excluded persons in the county from jury duty solely because of lack of qualifications and not because of race, the testimony of reputable witnesses was to the effect that there are Negroes in Vance County qualified for jury service (R. pp. 27, 38). On this point, W. H. Blackna, a member of the Board of Commissioners of Vance County, testified:

"I do know there are Negroes competent enough to serve on juries in Vance County prior to the purging in July, 1949 (the date the special venire in this case was called, which jury for the first time in 50 years or more included the names of Negroes). I cannot name any of them, but I know some." (R. p. 38).

The contention that there have been no Negroes qualified for jury duty in Vance County over the past 50 years would appear untenable to the most uninformed and would be a serious indictment of educational standards in Vance County and the State of North Carolina. This contention is further rendered for naught when it is considered that despite the contention that there were no Negroes in Vance County qualified for jury service, the names of seven Negroes were suddenly and surreptitiously included in the special venire called to try this cause,⁵ and also when it is considered that

⁵ It is more or less common knowledge in the State of North Carolina that in the past three years during which time this case has been tried and re-tried that the issue of exclusion of Negroes from jury service in the counties embracing the Black Belt of North Carolina, that is, the counties including Vance County, the County from which the trial jury in this cause was called, and Bertie County, the venue of the trial of this cause, which two counties, along with Hertford, Northampton, Halifax, and Warren Coun-

[fol. 14] responsible witnesses testified that prior to the alleged July, 1949 purge of the jury box in Vance County (upon which purge the state courts placed so much emphasis and based their rulings, in the face of an admitted violation of the constitutional guaranty prior thereto) that the names of Negroes had been consistently placed in the jury box (R. pp. 17, 22-23, 33-34, 42). In this connection, the United States Supreme Court said, in *Hill v. Texas*, supra, at 404:

"With the large number of colored male residents of the County who are literate, and in the absence of any

ties, constitute the Third Judicial District of North Carolina, in all of which counties, with the exception of Vance County the racial proportion of which is herein set out, the Negro population outnumbers the white, has been consistently challenged. At the outset of the trial of the present case, the fact that the trial jury herein would come from Vance County was made known to the Sheriff and Clerk of the Superior Court of Vance County by a telephone call from the Bertie County Superior Court, out of the presence and hearing of the defendant and his attorneys, although same does not appear on record. Henderson, the county seat of Vance County is approximately 120 miles from Windsor, the county seat of Bertie County, the distance which had to be traveled by the State Solicitor and the defendant and his attorneys to engage in the drawing of the special venire. The defendant, in his motion challenging the array of petit jurors specifically challenged the drawing of the special venire summoned in connection with his case (R. p. 13). These facts, together with the revelation made during the taking of testimony on the jury issue, that the jury scrolls bore a tell-tale marking which permitted the jury commissioners to tell Negroes from white persons (see infra), bear out the conclusion, through the unprecedented summoning of seven Negroes on the special venire in this cause, that the exclusion of Negroes from jury services in Vance County theretofore was not predicated upon a paucity of qualified Negroes, but pursuant to a studied and systematic plan of keeping Negroes off juries in said county solely and wholly on account of race.

countervailing testimony, there is no room for inference that there are not among them householders of good moral character who can read and write, qualified and available for grand jury service."

By statute in North Carolina (General Statutes of North Carolina, 1943, section 9-1), and as testified to by H. M. Robinson, Clerk of the Board of Commissioners of Vance County (R. pp. 22-23), the jury box of Vance County has been purged every odd year since 1905. This fact, together with the testimony of witnesses, heretofore referred to, that the names of Negroes have always been in the jury box of Vance County, robs the alleged jury box purged of July, 1949, after which the special venire in this case was called, of the importance and significance which the state courts attributed to it, and bears out petitioner's contention that the summoning of the special venire called in this case, as well as jury drawings in Vance County over the past fifty years, was based upon a studied plan of excluding Negroes from jury service in Vance County solely on account of race.

Furthermore, several of the jury commissioners, during the taking of testimony on this issue, boasted of the fact that they summoned for jury duty only persons whom they personally knew to be of sufficient intelligence and good moral character, and that Negroes were excluded from such lists because they did not personally know of any Negroes who possessed such qualifications (R. pp. 21, 33, 33-34, 35, 36). However, the United States Supreme Court emphatically reiterated the proposition, in *Cassell v. Texas*, supra, that in selecting persons for jury duty, the jury commissioners have an obligation to go outside of their personal knowledge and visage in ascertaining persons in their county eligible for jury duty. In this connection, this Court said, in the *Cassell* case, 70 S. Ct., at page 632:

"In explaining the fact that no Negroes appeared on this grand jury list, the commissioners said that they knew none available who qualified; at the same time they said they chose jurymen only from those people with whom they were personally acquainted. It may [fol. 15] be assumed that in ordinary activities in Dal-

las County, acquaintanceship between the races is not on a sufficiently familiar basis to give citizens eligible for appointment as jury commissioners an opportunity to know the qualifications for grand-jury service or many members of another race. An individual's qualifications for grand-jury service, however, are not hard to ascertain, and with no evidence to the contrary, we must assume that a large proportion of the Negroes of Dallas County met the Statutory requirements for jury service. When the commissioners were appointed as judicial administrative officials, it was their duty to familiarize themselves fairly with the qualifications of the eligible jurors of the county without regard to race or color. They did not do so here, and the result has been racial discrimination. We repeat the recent statement of Chief Justice Stone in *Hill v. Texas*, 316 U. S. 400, 404, 62 S. Ct. 1159, 1161, 86 L. Ed. 1559; 'Discrimination can arise from the action of commissioners who exclude all Negroes whom they do not know to be qualified to serve. In such a case, discrimination necessarily results where there are qualified Negroes available for jury service. With the large number of colored male residents of the county who are literate, and in the absence of any counter-vailing testimony, there is no room for inference that there are not among them householders of good moral character, who can read and write, qualified and available for grand jury service.'

"The existence of the kind of discrimination described in the *Hill* case does not depend upon systematic exclusion continuing over a long period and practiced by a succession of jury commissioners. Since the issue must be whether there has been discrimination in the selection of the jury that has indicted petitioner, it is enough to have direct evidence based on the statements of the jury commissioners in the very case. Discrimination may be proved in other ways than by evidence of long continued unexplained absence of Negroes from many panels. The statements of the jury commissioners that they chose only whom they knew, and that they know no eligible Negroes in an area where Negroes

made up so large a proportion of the population, proved the intentional exclusion that is discrimination in violation of petitioner's constitutional rights."

It is apparent, from the record in this case that the State, considering the manner in which it proceeded in its defense of this issue and its concession, adopted the theory that what happened with respect to juries and jury drawings in years past, that is, prior to the summoning of the special venire to sit in this cause, was of no moment with respect to the issue at hand, the sole consideration being, according to the State, the character of the special venire called to try "this case." (R. pp. 19, 39, 52-53). If there is anything that the cases heretofore cited emphasize, it is that one cannot undertake to show discrimination by "one instance." On an issue of this sort, the cases reveal that as a part of his case in showing the arbitrary exclusion of members of his race from jury service, the defendant must resort to evidence of the status and character of juries [fol. 16] prior to his trial and conviction, to avoid a possible conclusion of "chance" exclusion. On this point, the United States Supreme Court said, in *Patton v. Mississippi*, supra, at 466:

"In this case the Mississippi Supreme Court concluded that petitioner had failed to prove systematic racial discrimination in the selection of jurors, but in so concluding it erroneously considered only the fact that no Negroes were on the particular venire lists from which the juries were drawn and indicted and convicted petitioner. It regarded as irrelevant the key fact that for thirty years or more no Negro had served on the grand and petit juries;"

and at 468:

"The above statement of the Mississippi Supreme Court illustrates the unwisdom of attempting to disprove systematic racial discrimination in the selection of jurors by percentage calculations applied to the composition of a Single Venire." (Emphasis added).

In further support of his contention that the exclusion of Negroes from juries and jury service in Vance County

over the years was studied and purposeful, the defendant, in his examination before the court of the scrolls in the jury box,⁹ brought to light the fact that despite much profession to the contrary (R. pp. 22, 23, 33, 36, 42), the scrolls in said box were ingeniously marked so as to permit those handling said scrolls to tell the scrolls containing the names of prospective white jurors from those of Negroes. The evidence in the record discloses that with a few chance exceptions each of the scrolls bearing the name of a Negro, that is, every scroll examined before the court, contained an identifying "dot" or "period"¹⁰ from which one could at a glance tell that the person whose name said scroll con-

⁹ The Record will reveal, at pages 52-53, that despite insistent requests by defendants, the court denied defendant opportunity to examine all of the scrolls in the jury box, as a means of showing the extent to which said scrolls were distinctively marked to enable the jury commissioners to carry out, as he contended, their studied and purposeful scheme of excluding Negroes from jury duty. However, it was uncontradictorily apparent that from all of the scrolls examined, a system and scheme of tell-tale markings was being following by the commissioners. The Record also reveals, at pages 53 and 153, that the defendant excepted to the denial of the opportunity to complete his evidence in this respect, and assigned the same as error.

¹⁰ This Court is familiar with the fact that the history of the issue of exclusion of Negroes from jury service reveals that many and sundry methods have been adopted by jury commissioners to mark scrolls containing the names of Negroes eligible for jury duty so as to be able to distinguish them from the whites. This followed the detection of the obviously unconstitutional practice of omitting the names of Negroes from the jury box altogether. In some instances the names of Negroes were put in "red type" while those of whites were in black type; in others, after the names of Negroes was written the abbreviation "col." to distinguish them. The detection of all of the methods have spurred on the zeal of those bent upon discriminating against Negroes in this respect, to find new, more ingenious and less easily discernible ways of achieving the desired results.

[fol. 17] tained was a Negro. On the other hand, it was patently evident that no such "dot" or "period" was placed behind the name of a white person, and when these two sets of scrolls were placed side by side, the distinguishing mark on the scrolls of Negroes was easily and readily discerned.¹¹

It was to be expected that the officers in charge of jury drawings would deny that this detected mark of distinction was put on the scrolls containing the names of prospective Negro jurors for an ulterior purpose; yet no plausible reason was offered or could be offered for its presence. The fact of its presence, together with the other uncontroverted evidence on the issue, can lead only to the conclusion that this so-called minor, but tell-tale, marking was placed on the scrolls containing the names of Negroes to distinguish the Negroes from the whites and thus to enable the commissioners to overlook them in the selection of persons to serve on juries in Vance County. As the United States Supreme Court said in *Smith v. Texas*, supra, the federal constitution outlaws "ingenious" as well as "ingenuous" methods adopted for the purpose of depriving defendants of their rights.

5. That, as aforesaid, the petitioner has exhausted all of his state remedies, including a petition for a writ of certiorari to the United States Supreme Court, and petitioner is, therefore, remediless save in this Court and by this procedure.

6. That no previous application has been made for the writ herein prayed for.

¹¹ A close examination of the jury scrolls in this instance revealed that those in charge of preparing such scrolls went to such careful extreme to avoid confusion and the possible inclusion in the jury list of the names of Negroes that even where the name of a white juror ended in "Jr." or "Sr.", the "Period" was omitted from behind such abbreviations. This is a fact although testimony or evidence to this effect does not appear in the record.

Wherefore, the premises considered; the petitioner prays:

(1) That a writ of habeas corpus directed to the said respondent, J. P. Crawford, may issue in his behalf so that petitioner may be brought forthwith before this Court;

(2) That said respondent be required to appear and answer the allegations of this petition;

[fols. 18-20] (3) That following a full and complete hearing this Court relieve petitioner of said unlawful detention, imprisonment and sentence of death;

(4) That this Court issue forthwith an injunction specifically enjoining and restraining the respondent, J. P. Crawford, and his agents, officers and/or employees from putting into execution any sentence or judgment now standing against, or that has been imposed upon, this petitioner, in particular, in putting into execution on the 3rd day of November, 1950, or at any other time, the death penalty presently pending against petitioner, until such time as he and/or they shall have received direction and instruction in the premises from this Court.

(5) And for such other and further relief as to this Court may seem just and proper under the circumstances.

Raleigh Speller, Petitioner.

Duly sworn to by Raleigh Speller. Jurat omitted in printing.

[fol. 21]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA

[Title omitted]

ANSWER OF RESPONDENT, J. P. CRAWFORD, WARDEN OF CENTRAL PRISON OF THE STATE OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA—Filed November 17, 1950

The Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, North Carolina, answering the Petition for Writ of Habeas Cor-

pus, filed herein by Petitioner Raleigh Speller, for his answer, says:

I

The allegations of Article 1 of the Petition are not denied.

II

Answering the allegations of Article 2 of the Petition, the Respondent admits that the Petitioner is in his custody and confined in the Central Prison of the State of North Carolina, Raleigh, North Carolina, by virtue of a judgment and commitment containing a sentence of death by asphyxiation pronounced upon the Petitioner by the Superior Court of Bertie County, North Carolina, on September 5th 1949, as a result of the indictment and conviction of the Petitioner of the crime of rape after a full and fair trial in accordance with the laws of the State of North Carolina, in which Petitioner's guilt was judicially established; the Respondent denies that the imprisonment, restraint and sentence are illegal or void. It is denied that the Petitioner was denied the equal protection of the laws in violation [fol. 22] of the Fourteenth Amendment to the Constitution of the United States in said trial and the Respondent is advised and alleges that said conviction and sentence cannot be collaterally attacked in this proceeding. All other allegations contained in said Article 2 not herein admitted or denied, or admitted or denied in Respondent's further answer are untrue and are denied.

III

Answering Article 3 of the Petition, the Respondent denies that the Petitioner, Raleigh Speller, was at the time of the commission of the crime or of his conviction an illiterate and feeble-minded Negro and no evidence was presented during the course of his three trials to establish such illiteracy or feeble-mindedness. It is admitted that the Petitioner was thrice tried and convicted in the Superior Court of Bertie County, North Carolina, on a bill of indictment returned at the August 1948 term of Superior Court of Bertie County by a Grand Jury consisting of members of both the white and negro races charging the

Petitioner with the crime of assault and rape on the 18th day of July 1947, of a white woman by the name of Mrs. Aubrey Davis, about 50 years of age, and that the Petitioner appealed from each of said convictions to the Supreme Court of North Carolina, which appeals are reported as State v. Raleigh Speller, 229 N. C. 67, 47 S. E. 2d, 537; State v. Raleigh Speller, 230 N. C. 345, 53 S. E. 2d, 294, and State v. Raleigh Speller, 231 N. C. 549; and on the first appeal the Petitioner was granted a new trial because of jury defect and on the second appeal for failure to allow the Petitioner sufficient time or opportunity to present his challenge to the array and upon the third appeal the Petitioner's conviction was affirmed by the North Carolina Supreme Court. It is admitted that when the Petitioner's case was called for trial upon the third occasion, at the August 1949 term and upon the bill of indictment found at the August 1948 term of said Court, the presiding Judge, upon motion of the Petitioner, ordered a special venire to be drawn from Vance County in the same [fol. 23] Judicial District as Bertie County, and the most remote County in said District; that the Petitioner was afforded ample opportunity to examine the jury boxes from which said jury was drawn to determine whether or not, pursuant to a long and continuous practice, Negroes had been discriminated against in the selection of juries, solely on account of race and/or color; that after the jury boxes had been brought into the Courtroom and numerous names drawn therefrom and evidence heard, the Court found the facts as fully appear in the record and denied the Petitioner's motion to quash the array. That thereafter upon the evidence introduced at said trial, as detailed in the copy of the record of said trial, filed herewith, the Petitioner was convicted of the capital crime of rape without recommendation of mercy and sentenced to death by asphyxiation.

The Respondent avers that Article 3 of the Petition sets out contentions of the Petitioner as to the facts involved in this case and inferences and conclusions of Petitioner's counsel with respect thereto, all contrary to the findings of the trial court and jury which duly convicted the Petitioner after a full and fair trial; that except as herein admitted, and as may be admitted by Respondent in further answer to

the Petition, the allegations of Article 3 are untrue and are denied.

IV

It is admitted that upon the affirmation by the Supreme Court of North Carolina of Respondent's third conviction and sentence, the Petitioner applied to the Supreme Court of the United States for a Writ of Certiorari to review the decision of the Supreme Court of North Carolina, and that on the 9th day of October 1950 the Supreme Court of the United States denied said application for said Writ, which Writ was based upon the same facts, arguments, contentions as to the law which the Petitioner now requests this Court to review upon this Petition for a Writ of Habeas Corpus. [fol. 24] It is denied that the extracts from the evidence introduced in the course of the trial in the Superior Court of Bertie County, set out in Article 4, constitutes a fair statement of all said evidence but consists only of those portions which the Petitioner considers favorable to him. The Respondent is filing herewith a copy of the record of the proceedings in the Vance County Superior Court and reference is made to the same for a statement of all the proceedings and evidence presented in said case.

The allegations of Article 4 consisting of contentions of Petitioner as to the facts, inferences and conclusions of counsel for Petitioner, with an admixture of legal arguments and citations of legal authorities, all commingled together, Respondent is advised and believes and, therefore, alleges that all allegations relating thereto should be stricken from the Petition. That except as herein admitted, or as may be admitted by the Respondent in further answer to his Petition, the allegations of Article 4 of the Petition are untrue and are, therefore, denied.

Further answering said Petition for the purpose of the dismissal of same, and by way of plea in bar of the relief sought in said Petition, the Respondent, J. P. Crawford, warden of the Central Prison of the State of North Carolina, says and alleges:

1. That the Petitioner was indicted for the crime of rape in the first degree in the Superior Court of Bertie County, North Carolina, for assault and rape perpetrated upon Mrs.

Aubrew Davis, a white woman about 50 years of age; that the crime of rape in the first degree is prohibited by the statute and the laws of the State of North Carolina, and the penalty for said crime, upon the conviction of same, without recommendation for mercy, is death by asphyxiation to be administered by the Warden of the Central Prison in the State of North Carolina; that the Superior Court of Bertie [fol. 25] County is a court of general jurisdiction and had jurisdiction over the offense charged and over the person of the Petitioner, and at no time lost such jurisdiction during the three trials of the Petitioner.

That after the Petitioner had previously been arraigned and caused a plea of "not guilty" to be entered he, for the first time, challenged the array of petit jurors. After the Court held a hearing, at which the Petitioner had been afforded an opportunity to examine the jury boxes and the scrolls therein, in open court, and had offered evidence attempting to show that members of the Negro race had been purposely and systematically excluded from juries solely because of their race and/or color. The Court made full and complete findings of fact as will appear in the record filed herewith and over-ruled or dismissed said motion of challenge to the array of petit jurors and said cause was duly tried by a jury drawn from a panel containing members of the Negro race, which jury returned a verdict of guilty of rape in the first degree, without recommendation of mercy. The Petitioner was sentenced to death under mandatory laws of the State of North Carolina upon the conviction of such offense; that said Petitioner, together with said judgment of death, made in writing, was transmitted to the Respondent for the purpose of carrying out said sentence as required by law, and the Respondent detains and has the Petitioner in his custody under said judgment or sentence of death as commanded by the Superior Court of Bertie County for the purpose of executing and carrying out said judgment as provided by law. That a duly certified copy of the record and proceedings had in the trial of the petitioner in the Bertie County Superior Court, including a transcript of evidence as transcribed and reported by the official Court Reporter and including a copy of the sentence or judgment of death by virtue of which

[fol. 26] Respondent detains and has custody of Petitioner, is filed herewith, and made a part of this Paragraph as if fully set forth herein; that Respondent is advised and believes and so alleges: that said sentence or judgment was pronounced, entered and signed by a Court having jurisdiction to indict and place Petitioner on trial, that Petitioner was convicted after a regular, proper, lawful and constitutional trial was had, and said judgment or sentence pronounced upon Petitioner is valid, legal and constitutional, and said proceedings, trial and judgment are here pleaded in bar of any rights the Petitioner may have to seek the relief demanded in his Petition.

Upon advice of counsel it is alleged that the Petitioner cannot employ a Habeas Corpus as a substitute for an appeal or Writ of Error, thereby collaterally attacking the proceedings and judgment of the State Court, such collateral attack being based upon the same facts, law, arguments and motion challenging the array of the trial jury as set forth in the Petition for a Writ of Certiorari to the United States Supreme Court which was denied by said Court. That the Petitioner filed a transcript showing the proceedings in the trial of the case in the Bertie County Superior Court, both in the Supreme Court of North Carolina and the Supreme Court of the United States and the adjudications of said courts are here pleaded as grounds for the dismissal of the Habeas Corpus proceeding and the discharge of any Writ of Habeas Corpus issued herein, and in bar of any rights that the Petitioner may have to seek relief in this proceeding.

V

Respondent, therefore, shows the Court that the Petitioner is in his custody and is being detained by him pursuant to the judgment and commitment issued by the Bertie County Superior Court and for the reasons above alleged, is informed and believes that said judgment was valid, legal and proper, being pronounced and signed by a Court having jurisdiction of the crime of which the Petitioner was charged, tried and convicted; that he is entitled to the custody of the Petitioner until such time as he may [fol. 27] be dealt with for the purpose of carrying out the

requirements of the judgment issued by said Court as provided by the laws of the State of North Carolina.

Wherefore, Respondent prays the Court:

1. That the Petition for a Writ of Habeas Corpus heretofore filed in this cause be dismissed.

2. That any Writ of Habeas Corpus that may have been issued or may issue or that may be issued in this cause be denied, dismissed and discharged.

3. That the order or injunction heretofore issued restraining Respondent and putting into effect the judgment or commitment under which the Respondent has custody of and detains the Petitioner be dismissed.

4. That the judgment and commitment under which Respondent holds Petitioner and under which he detains and has custody of Petitioner be declared to be a legal, valid and proper judgment and not subject to any attack in a Habeas Corpus proceeding.

5. That Respondent be authorized to carry out and execute said judgment in accordance with the laws and statutes of the State of North Carolina.

6. For such other and further relief to which Respondent may be entitled, and which may be proper in this proceeding.

Harry McMullen, Attorney General of North Carolina; H. J. Rhodes, Assistant Attorney General; R. Brookes Peters, General Counsel of the State Highway and Public Works Commission; E. O. Brogden, Jr., Attorney and Member of Staff of State Highway and Public Works Commission, Attorneys for Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, North Carolina.

[fols. 28-33]. *Duly sworn to by J. P. Crawford. Jurat omitted in printing.*

[fol. 34]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA

[Title omitted]

RETURN TO WRIT—Filed December 19, 1950

To His Honor Don Gilliam, United States District Judge
Presiding over the District Court of the United States
for the Eastern District of North Carolina, Raleigh
Division:

The respondent, J. P. Crawford, Warden of the Central
Prison of the State of North Carolina, Raleigh, N. C., re-
spectfully makes the following return to the Writ of Habeas
Corpus issued to him on the 18th day of December, 1950.

1. That in his official capacity he has the said Raleigh
Speller in custody at Central Prison, Raleigh, North Caro-
lina.

2. That the authority under which he has the said Raleigh
Speller in custody and imprisonment is by virtue and
authority of a Judgment from the August Term, 1949, of
the Superior Court of Bertie County, a photostatic copy
of which is hereto attached and by reference made a part
of this return. That a certified copy of said Judgment will
be produced and exhibited to Your Honor upon the return
of this writ.

3. That the answer heretofore filed by the undersigned
respondent in opposition to the petition for Writ of Habeas
Corpus, filed in this proceeding and now pending before
this court, is hereby referred to and made a part of this
return for the purpose of showing the authority by which
the aforesaid Raleigh Speller is being held in custody and
imprisonment.

4. That upon the return of said writ at the time and
place therein set out or designated by Your Honor, he now
has before Your Honor the body of the said Raleigh Speller
as by said Writ commanded.

[fol. 35] And having made a full return of said Writ, he

now stands ready and willing to receive, abide by, and perform such orders as Your Honor may make in the premises.

J. P. Crawford, Warden of the Central Prison of the State of North Carolina.

Duly sworn to by J. P. Crawford. Jurat omitted in printing.

[fol. 36]

EXHIBIT I TO RETURN

IN THE SUPERIOR COURT, AUGUST TERM, 1949

North Carolina, Bertie County

STATE OF NORTH CAROLINA

VS.

RALEIGH SPELLER

JUDGMENT

The defendant, Raleigh Speller, having at this term of the Superior Court of Bertie County been convicted by a jury of the capital offense of rape, as charged in the bill of indictment:

It is, therefore, ordered and adjudged that the said prisoner, Raleigh Speller, suffer for the crime the penalty of death, as provided by law, and to that end it is, therefore, ordered and adjudged that the Sheriff of Bertie County, in whose custody the prisoner, Raleigh Speller, now is, forthwith convey to the State's Prison at Raleigh such prisoner, Raleigh Speller, and deliver said prisoner, Raleigh Speller, to the Warden of the said State's Prison who, the said Warden, on Friday, the 28 day of October, 1949, between the hours of six A. M. and eleven A. M. of the same day, shall cause the said Raleigh Speller to be conveyed to the place of common execution, as provided by law, and then and there, as provided by law, shall cause the said prisoner, Raleigh Speller, to inhale lethal gas of sufficient quantity to cause death, and the administration of such lethal gas shall be continued until the said Raleigh Speller is dead. And may the Lord have mercy on his soul.

Done at Windsor, North Carolina, this the 5 day of September, 1949.

W. I. Halstead, Special Judge Presiding.

NORTH CAROLINA,
Bertie County:

I, Geo. C. Spoolman, Clerk of the Superior Court of Bertie County, North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the Judgment in State vs. Raleigh Speller.

Witness my hand and official seal, this the 5th day of September, 1949.

Geo. C. Spoolman, Clerk Superior Court.

[fol. 37]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA

[Title omitted]

MOTION TO DISMISS—Filed January 3, 1951

The Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, North Carolina, now moves the Court to dismiss the Petition for Writ of Habeas Corpus filed in this cause; to dismiss and discharge the Writ of Habeas Corpus heretofore issued in this cause; and that the Petitioner be remanded to the custody of Respondent for the purpose of making effective the sentence based upon the Judgment of the Superior Court of Bertie County, for the reasons and grounds following:

1. For that the record of the proceedings in the State Courts in the case of Petitioner, a certified copy of same being filed in this Court, discloses that the Supreme Court of North Carolina, the highest appellate court in the State of North Carolina, had jurisdiction to review upon appeal the matters and things about which Petitioner now complains and seeks a review in the Federal District Court by

Petition and Writ of Habeas Corpus, and cannot now have a review of these same questions by Writ of Habeas Corpus in the Federal Court, as a substitute for an appeal.

2. For that the record of Petitioner's trial in the Superior Court of Bertie County, North Carolina, does not show or disclose any exceptional circumstances of peculiar urgency in connection with said trial that require the inter-[fol. 38] vention of a Federal Court by Habeas Corpus; that said record as well as said Petition of Writ of Habeas Corpus discloses that there has not been any gross violation of constitutional rights of Petitioner such as to deny the substance of a fair trial or that Petitioner was prevented from raising any questions for his defense on said trial because of ignorance, duress or other reason for which Petitioner should not be held responsible.

3. For that the Petition discloses that Petitioner seeks a review by Writ of Habeas Corpus of the issue as to whether or not members of Petitioner's race were unconstitutionally excluded from service on Grand and Petit juries in Bertie County, North Carolina, and such question or issue having been raised, tried and heard in the State Court and decided adversely to Petitioner, the same cannot now be reviewed by Writ of Habeas Corpus; that said issue or question of alleged jury discrimination has been reviewed by the Supreme Court of North Carolina on appeal by Petitioner and his application for Writ of Certiorari having been denied by the United States Supreme Court, cannot now have said questions or issue reviewed by the Federal Court on Writ of Habeas Corpus; that if there was error in the decision of the State Court on the question or issue of jury discrimination the same was an irregularity and not a jurisdictional defect and cannot now be reviewed by Writ of Habeas Corpus.

[fols. 39-41] Harry McMullan, Attorney General of North Carolina; Hughes J. Rhodes, Assistant Attorney General of North Carolina; Ralph Moody, Assistant Attorney General of North Carolina; R. Brookes Peters, Jr., General Counsel State Highway & Public Works Commission; E. O. Brogden, Jr., Attorney State Highway & Public Works Commission.

[fol. 42]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA

[Title omitted]

Transcript of Evidence—Filed January 29, 1951

The above entitled action came on for hearing before the Honorable Don Gilliam, United States District Judge, in the courtroom of the Edgecombe County Courthouse in Tarboro, North Carolina, on January 3, 1951.

APPEARANCES

Attorneys for Petitioner:

Herman L. Taylor, Esq., Raleigh, N. C.

Caswell J. Gates, Esq., of Durham, N. C.

Attorneys for Respondent:

R. Brooks Peters, Esq., Raleigh, N. C., General Counsel
State Highway & Public Works Commission.

Hugh J. Rhodes, Esq., Raleigh, N. C., Assistant Attorney
General of North Carolina.

E. O. Brogden, Jr., Esq., Raleigh, N. C., Attorney for
State Highway & Public Works Commission.

[fol. 43] Mr. J. P. Crawford, Warden of Central Prison
of the State of North Carolina, is present in court with the
petitioner, Raleigh Speller.

Respondent files formal motion to dismiss the petition for
habeas corpus. The motion is denied. Respondent excepts.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Taylor: I call attention to the stipulation of counsel
entered into in November with respect to the fact that the
record of this case in the Superior Court of Bertie County
is admitted in this case.

The Court: When was this case tried?

Mr. Taylor: August, 1949. I wonder if they will agree
that prior to the time of the calling of the special venire in
this case no negro had served on a grand jury or petit jury
for Vance County in fifty years?

Mr. Peters: We will not agree to that.

Mr. Taylor: I am wondering if they will stipulate that no negro was on the trial jury that convicted this defendant?

Mr. Rhodes: We will not agree to that. It is shown affirmatively that negroes were on the panel.

Mr. Taylor: I want to have them stipulate that prior to the July occurrence the jury commissioners of Vance County had every two years purged the jury box of Vance County.

Mr. Peters: I think the record shows that.

Mr. Taylor: We would like opportunity to examine the books as we did in the other case. In the other case we had [fol. 44] another issue we could be trying while that was being done. We will have to have indulgence of the Court. We propose to proceed as we did in the other case. I was wondering if it would facilitate the trial if Your Honor would permit us to do that now.

The Court: You are speaking of the tax book?

Mr. Taylor: Yes, sir.

The Court: Mr. Peters told me there is no jury scroll book in this case.

Mr. Brogden: There is only one book in controversy and that is the tax list.

Mr. Rhodes: I want to be as lenient as we can. This case was tried by this same counsel in the Superior Court three times. They have had since December 18th to examine these records in the courthouse in Vance County. Now we come here and delay the Court to permit them to take these same records and examine them.

Mr. Taylor: We tried in the other case to examine the books in Greenville but didn't have opportunity to examine them as we should, though we had reasonable co-operation. I spent a whole day in Greenville and it couldn't be done. They would close the office and go to dinner and things like that.

Mr. Rhodes: I wouldn't want to be put in the position of saying the public citizens of Vance County would not permit any person to go in and examine the public records.

Mr. Brogden: I called them and asked them to give them [fol. 45] access to the books.

The Court: He said that in the case in Greenville, while

he had reasonable amount of co-operation he didn't have full opportunity to go in and check the books. I can understand that. He says he didn't attempt it in this case because judging from what happened in the other case he knew it to be futile. I ask the question, can you furnish now the books brought in response to the subpoena? Is the tax book for 1948 now in the courtroom?

Mr. Brogden: Yes, sir, it is here. Records of persons who served on the jury in Vance County from 1949, for the past five years. We have the records from 1948 up to now.

Mr. Taylor: That is all right.

The Court: The registration books, are they here?

Mr. Rhodes: They will be here.

Mr. Taylor: And all records in possession of the Register of Deeds that has bearing on selection of the jury. As clerk to the board of county commissioners he would have the minutes of the board.

The Court: As I understand it it is customary to set out on the minutes the names of the jurors drawn.

Mr. Robinson: Register of Deeds of Vance County: I have the minutes.

The Court: Are there any other books that you have that you think would have any bearing?

[fol. 46] Mr. Robinson: I have copy of the jury drawn which is in the minutes.

Mr. Brogden: He has double list of the tax book.

The Court: What examination do you wish to make?

Mr. Taylor: Your Honor is familiar with the procedure we followed in the other case.

The Court: Yes, but you don't have the same situation if there is no jury scroll. I don't know what you want to check against. The tax book and registration list?

Mr. Taylor: I think the absence of the jury scroll will not prevent us making a study. The minute book of the board of county commissioners contains names of persons called to serve on the jury and we could check that with the tax book. We can use that for the same purpose. Instead of having a scroll book they kept the names in the minutes. The same purpose is achieved as if kept in the scroll book.

The Court: I understand jury scroll is a list of all the names in the jury box. All that the minutes would show would be jurors drawn for service.

Mr. Taylor: I don't have any knowledge of it but there must be some source by which they set out the persons qualified for jury service. I suppose in the course of questioning of witnesses that could be determined.

Mr. Brogden: Since he doesn't seem to know what he will need it seems to me the best way is to go ahead with the [fol. 47] witnesses. It looks like a fishing expedition.

Mr. Taylor: It would be useless for me to proceed with questioning of witnesses if I don't have a basis. In the other case that phase was suspended while counsel checked the records.

Mr. Rhodes: The only record before the Court is the 1948 minute book. In the Pitt County case the names were taken both from the registration list and the tax list. In Vance County the names came entirely from the tax list. I don't see how the registration books would have any bearing on this case.

The Court: Was all the evidence before Judge Halstead to the effect that they came from tax book and no evidence to the contrary?

Mr. Rhodes: That is correct. Every witness said the names were taken from the tax list. The fact that they are qualified to vote would have no bearing on the fact whether they were qualified as jurors. They said they took the names from the tax list and they can only take the names from that list.

Mr. Taylor: The statute as amended was not restricted to Pitt County.

The Court: That is right. I don't know of any requirement that the county commissioners must put all qualified persons in the jury box. It doesn't say that every qualified person in the county shall be in the jury box.

Mr. Taylor: That may be true but if over a period of fifty [fol. 48] years they put five negroes' names in there that would go to the very heart of the thing.

The Court: You could show that numerous white people were qualified who were not in the jury box.

Mr. Taylor: We are requesting opportunity to examine the books.

The Court: I will work it out so that the petitioner will have every opportunity to show what the facts are. Nobody wants to take a course that deprives him of his life. At the

same time we have to proceed according to law and evidence and certain order. Here are these people from Vance County subpoenaed to bring the books. They have to stay until this matter is ended or until they are called upon to give their testimony. I had thought there would be no question but what we would finish this case today and tomorrow.

Mr. Taylor: Our examination may disclose much more than we are able to put before the Court now.

The Court: What kind of investigation? Here are certain records that have been brought here. There is no suggestion that anybody has withheld any records. Here are the registration books, tax book and minutes of the board of commissioners. That is all there is. What do you propose to do if I give you time to investigate? How will you proceed?

Mr. Taylor: It is a known fact that the record shows in the past eleven years some three thousand persons called [fol. 49] and that no negro has been called for jury duty. This is in the record. Showing that after the special venire was called and the Henderson Daily Record reported that for the first time in fifty years that prior thereto no negro had been called for jury duty in Vance County. He had been editor for thirty-five years and didn't know of any negro having been called for jury service. First of all, we don't care to take up any more of the Court's time than we possibly can.

Mr. Brogden: This special venire that went down there, he has got to take that one. He has got to show that this special venire was not properly constituted before he can make out his case.

Mr. Rhodes: The record shows that on several occasions the solicitor in the trial of this case made the statement that if defendant was able to show any discrimination as to the 1949 jury box he would not question whether or not any discrimination in the boxes preceding the 1949 box. In other words if the 1949 box in no way tainted with discrimination it doesn't make any difference whether the others were or not. He has just got to take the 1949 box and find there was discrimination in that box then we are not concerned with whether any discrimination preceding that.

Mr. Taylor: We are not assuming that the jury box from which this venire was drawn was properly constituted. The

other phase is whether there has been systematic discrimination.

[fol. 50] The Court: Let us assume there had been systematic discrimination of the negro race up to 1949 and that in 1949 the county commissioners took an entirely different view of it and that in that box, the box from which this panel was drawn, there was the inclusion of qualified negroes in that box and no objection can be found to the way it was constituted. Then what had happened in the years up to that time would that have any bearing upon it? Assuming the box from which this particular panel was drawn was legal box in which both negroes and whites qualified to serve, would you have anything?

Mr. Taylor: Yes, sir. In this record the commissioners testified that prior to 1949 they had negroes' names in the box. If that is true how could they have drawn seven negroes in 1949 and in fifty years had never drawn any? In this record, the jury scroll those negroes had identifying marks. How could they draw seven in one year when they had negroes' names in the box before that and had never drawn any before in fifty years?

Mr. Brogden: Petitioner and his counsel were there when the venire was drawn from the box.

The Court: There is no indication of how long it will take or what you propose to do. I feel that I would not be justified in waiting and keeping these people here for an indefinite length of time for some indefinite kind of investigation.

Mr. Taylor: All the jury scroll list is not here. They do have the jury box here. The jury box will contain the names [fol. 51] of all persons qualified for jury duty.

The Court: Do you want to have time to check each name in the jury box and find out if each person is negro or white and check that against the tax book, and registration book?

Mr. Taylor: That is what we propose to do.

Mr. Rhodes: The jury box was brought in the courtroom and a large number of names were drawn from that box. Many of those names had before it or after it a dot but this record discloses that there were negroes who had dots before or after their names and whites who had dots before or after their names and persons who couldn't be identified

as to race who had dots before or after their names. He wants to take the jury box and drag out the same thing.

The Court: I don't understand that the petitioner is bound by the record.

Mr. Taylor: We objected to the trial Judge refusing us to examine the entire jury box.

Mr. Peters: The Judge before he proceeded, asked counsel if there was any further evidence and he said no.

Mr. Taylor: He had twice refused to let us go ahead with our examination of the jury box.

The Court: How many names in the jury box?

Mr. Robinson, Register of Deeds of Vance County: Probably a thousand.

The Court: Are you making any question about the grand jury in this case?

[fol. 52] Mr. Taylor: No, sir, trial jury only.

The Court: We must recognize this fact. Here is a case that is different from most cases in that a human life is involved. It wouldn't take me five seconds to decide that the petitioner ought not to have time to make further investigation but when I am faced with the fact that human life is at stake that makes a difference. You can't pass hurriedly over it.

Mr. Peters: Yes, sir, but this case has been to the State court three times and to the United States Supreme Court.

The Court: Now that it is before me I want to see that the petitioner gets every right that the law affords him.

H. M. ROBINSON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. What is your full name?

A. H. M. Robinson.

Q. Mr. Robinson, do you hold any official capacity with Vance County?

A. Register of Deeds.

Q. How long have you been register of deeds in Vance County?

A. December 1, 1930.

Q. As Register of Deeds of Vance County do you have any relationship with the board of commissioners of Vance County?

A. Clerk to the board.

Q. How long have you been clerk to the board?

A. Since 1930.

[fol. 53] Q. Prior to 1930 did you hold any public office in Vance County?

A. I did not.

Q. As clerk to the board do you attend meetings held by the commissioners?

A. I do.

Q. You also attend meetings at each time they select persons to serve on juries in Vance County?

A. I do.

Q. Tell us what is your duty in respect to aiding the commissioners?

A. Write the name down that they call out.

Q. Where are those names obtained that are written down?

A. From the jury box.

Q. Do you know how the names first get into the jury box?

A. Commissioners have a list made and put it in there.

Q. Who makes that list?

A. I do, or it is under my supervision.

Q. Will you describe to the Court the procedure followed in making up that list?

The Court: You are referring to the 1949 box?

Mr. Taylor: I am speaking generally.

A. Name is taken from the tax book.

Q. Tell us what you do, how you go about doing it?

A. Make a list of names on the tax books and give it to the commissioners.

[fol. 54] Q. Do you do it or have someone else do it?

A. I read the names and a lady in the office copies them on the typewriter.

The Court: You read the names off of the tax book and the lady takes them down?

A. Yes, sir.

The Court: By what rule did you proceed in selecting those to be used as jurors? You didn't read them all out?

A. Mostly real estate I imagine.

(Direct examination resumed.)

Q. Are you familiar with the makeup of this tax book, with respect to race or respect to property holder?

A. Start with the beginning of the alphabet and go on through it?

Q. Is the book divided into white and negro race?

A. Yes.

Q. In which order does the white race come; if you know? Do you start with the white, beginning with "A" and exhaust the alphabet and then begin with the negroes, beginning with "A" and exhaust the alphabet?

A. Yes.

Q. Know how many townships in Vance County?

A. Nine.

Q. That same alphabetical arrangement is kept for each township in the tax book?

A. Yes.

[fol. 55] Q. With respect to the 1949 jury drawing will you state to His Honor the exact procedure you followed in determining the persons whose names would go in jury box No. 1?

A. I went through the book and made a list of the names and turned it over to the Commissioners the first of July.

The Court: 1949?

A: Yes, sir.

Q. You started with Henderson Township white and went through?

A. I didn't take the corporations.

Q. You started with Henderson Township and went through Henderson Township first?

A. Yes, started in the front of the book and went through it.

Q. You can answer my question, can't you? You started with Henderson Township first?

A. Yes.

Q. Went through Henderson Township?

A. I started at the front of the book and went through it.

Q. You went through Henderson Township first?

A. That's right.

Q. White and colored?

A. Yes.

Q. Then next you went through Kittrell Township?

A. Yes.

Q. Then went through Watkins Township?

A. Yes.

[fol. 56] The Court: You followed that process through the whole book?

A. Yes, sir.

Q. With respect to Henderson Township did you write down on the list you made the names of all persons you came to?

A. I didn't write every name.

Q. Upon what basis was a name excluded?

A. No particular basis.

Q. How did you arrive at the conclusion you would omit some and not others?

A. Just copied down the names of the people who had right much real estate.

Q. Did you follow that as to both white and negro?

A. Yes.

Q. Some of them you did leave off?

A. Yes.

Q. What is your explanation for leaving those off?

A. No particular explanation.

Q. You just in your discretion—

A. No discretion. I just made a list for the board.

Q. You say you omitted some names?

A. Yes.

Q. I am trying to get your explanation for omitting those names.

A. I just told you I made a list of the ones that showed the most property on there.

[fol. 57] Q. How much property does a man have to own before you put him on your jury list?

A. I don't know that he has to have any.

Q. You said you omitted some names and not others. On what basis did you omit some names?

A. All I know is just what I told you.

Q. You stated you took the names of those who had the most property?

A. I reckon the lady has a record of what I said.

Q. You don't recall having said that?

A. Said what?

Q. That you took the names of those who had the most property?

A. I may have.

The Court: Regardless of what you said what did you do? My recollection is that you made some statement about you took the persons who had considerable property. What did you actually do?

A. Went through the list, white and colored and took the names of those who had most real estate and personal property, both white and colored.

Q. Did you discriminate as to race?

A. No, sir.

Q. Did you put in every negro that you thought was of good moral character?

[fol. 58] A. I left that to the commissioners.

The Court: You were familiar with the provision of the statute that requires a person to be of good moral character, possess sufficient intelligence and be over twenty-one years of age to be qualified as a juror?

A. No, sir.

Q. Did you bear those qualifications in mind when making the list?

A. We have some minors and I didn't put them on there.

Q. If you came to a person that was not morally fit to serve what did you do?

A. Left him out.

Q. Suppose you came to a person that didn't have sufficient intelligence to serve as a juror what did you do?

A. I didn't take that too much in consideration. I felt that all I had to do was make the list and give it to the commissioners for them to pass on.

Q. Would the minutes of the board show what your instructions were about purging the jury box?

A. They didn't give me any instructions.

Q. Would anything show on the minutes?

Mr. Brogden: There is not anything in the minute book about it.

[fol. 59]. (Direct examination continued):

Q. You said you omitted some names. That is you didn't copy every name you found in the tax book?

A. No.

Q. You omitted some names?

A. Yes.

Q. I am trying to find the basis for your omission of those names?

A. The only think I know is just what I told the Judge here.

Q. And what was that?

A. That if a person was under age, or if I knew the man and something wrong with him I didn't put him down there.

Q. It wasn't a part of your duty to disqualify him on that ground?

A. Not that I know of.

Q. You know how many names on the book were persons twenty-one years of age?

A. I don't.

Q. Know how many names on the tax book?

A. I don't.

Q. Know how many names you omitted?

A. I don't.

Q. But you know you omitted some names?

A. I didn't copy every name.

Q. You have any idea how many names you had on the list?

A. I couldn't say.

[fol. 60] Q. Don't know whether ten thousand, or five thousand or twenty-five thousand?

A. No.

Q. Mr. Robinson, what did you do with the list you say you prepared for the jury commissioners?

A. When they gave it back to me I cut it up and put it in that box.

Q. That list you prepared did you prepare it in duplicate?

A. Did not.

Q. Just made one copy?

A. That is all.

Q. Tell me this, did you have any assistance in preparing this list you were going to give the county commissioners? Did anybody help you?

A. The lady who wrote the names on the typewriter.

Q. Who was she?

A. Lady in my office.

Q. One of your assistants?

A. Yes, sir.

Q. Did she write it in single or double space?

A. Either double or three spaces, I don't know which.

Gave room to cut them up.

Q. How many times did she type that list?

A. One time.

Q. You called it to her and she typed it one time?

[fol. 61] A. Yes, sir.

Q. What happened to that list when you got through with it?

A. I cut it up.

Q. You turned it over to the commissioners and then you got it back from the commissioners?

A. They gave it back to me.

Q. So the list you gave the commissioners contained the names of all persons you had got from the tax book?

A. Yes, sir.

Q. When you got through calling them off did you check them back?

A. No, sir.

Q. What was the condition of the list when you got it back from the commissioners? Had any names been added, deleted or written in between names?

A. Wasn't any written in that I know of.

Q. The list you got back from the commissioners was the same list you gave them?

A. Same list.

Q. Had any been added?

A. No.

Q. Any stricken?

A. May have been some marked out.

Q. Do you think there were?

A. I think so but I am not positive.

[fol. 62] The Court: Substantially the list that came back to you was the same list you had prepared?

A. Yes, sir.

Q. And every name on there was taken from the tax list?

A. Yes.

Q. You say when you got that list back you cut it up and put it in the jury box?

A. That's right.

Q. Did you retype the list?

A. I did not.

Q. The original list you got back and cut up and put in box No. 1 do you know what procedure the commissioners followed in determining whose name should stay on that list?

A. I don't know.

Q. And you didn't go to any other source beyond the tax book in determining who would be on that list of yours?

A. No.

Q. Mr. Robinson, how long have you been engaged in the work of preparing the jury list for county commissioners?

The Court: He told you since 1930.

Q. And that has been true in your case for twenty years?

A. December 30th.

Q. Did you follow the same procedure as you followed in other cases?

A. Yes.

[fol. 63] Q. In your twenty years as clerk to the board of county commissioners of your own knowledge how many negroes have you known to be called for jury service?

A. I don't know.

The Court: Give him the best estimate you can? Do you know of any?

A. I don't know of any.

Q. Know of any negro who has ever been called for grand jury or petit jury in Vance County?

A. Since when?

Q. In the twenty years you have been clerk to the board you haven't known any to serve on the jury?

A. I have.

Q. Prior to the calling of this special venire in 1949?

A. I don't recall.

Objection by respondent overruled. Respondent excepts.

Q. You did attend a majority of meetings at which jurors were drawn?

A. Yes.

Q. You wrote the names down that they gave you?

A. I did.

Q. Those names you wrote down, what names were they?

A. Names drawn from the jury box.

Q. Wrote them as persons drawn by jury commissioners?

A. Not then but when I wrote up the minutes.

[fol. 64] Q. Names were written in there who were drawn by jury commissioners to serve as jurors at various terms of court?

A. Yes.

The Court: How many negroes were on the panel in this particular case, jurors who were drawn to go down to Windsor and act as jurors in this case?

A. Six or seven, or seven or eight. I don't know exactly.

The Court: It is proposed to draw the names from the jury box, one by one, and have it determined whether that particular name is on the tax book and if so whether that name is with the negroes or whites.

The respondent enters a general objection to each and every question with regard to all the evidence introduced.

The Court: Mr. Robinson, will you take a chair by that table on which is the jury box.

The jury box is opened.

The Court: Gentlemen representing the respondent, I am assuming that each side will make a list as we go along. The names are now being called from No. 2 jury box.

(Note: At the continued hearing of this case on January 23, 1951 it was stipulated that it would not be necessary for

the reporter to include the entire list of names but that the names of negroes drawn from box No. 2, forty-one in number, be incorporated in the record, and was stipulated that that list be made alphabetically.) See Page 104.

The following is an alphabetical list of names of negroes drawn from jury box No. 2:

Name	Township
1. Adams, J. B.	1
2. Boyd, Cyrus	6
3. Brooks, W. T.	3
4. Brown, Mollie	7
5. Bullock, E. A.	1
6. Bullock, Moses M.	5
7. Christmas, Walter	3
8. Cousins, William, Sr.	6
9. Crews, William	6
10. Crudup, John	1
11. Cunningham, Maggie	2
12. Davis, Walter	7
13. Eaton, Lucy A.	1
14. Eaton, Sallie A.	1
15. Edwards, Frank	3
16. Evans, Johnny	5
17. Evans, Louis	1
18. Fogg, William	7
19. Hanks, Beulah	3
20. Hawkins, Robert	7
[fol. 66] 21. Henderson, Edward	6
22. Henderson, J. A.	4
23. Henderson, James	5
24. Hunt, Johnny Bell	2
25. Jackson, Thaddeus	1
26. Jones, Pompey J.	1
27. Lewis, Clara	6
28. Massenburg, Early	7
29. Parkam, S. C.	1
30. Paschal, William	5
31. Peebles, W. H.	1
32. Plummer, Chesley	5
33. Pool, Marion	1

Name	Township
34. Reed, Phil E.	6
35. Revis, Edward L.	1
36. Vincent, Moses	7
37. Walker, T. J.	5
38. Williams, Jr. Robert	5
39. Wilson, Josephine	7
40. Wimberly, R. E.	1
41. Wyche, Oliver	1

[fol. 67] D. P. McDuffy, having been first duly sworn, testified in behalf of the respondent as follows:

Direct examination.

By Mr. Rhodes:

Q. Mr. McDuffy, I believe you are Chairman of the Board of Elections for Vance County?

A. Yes, sir.

Q. How long have you been chairman?

A. Six years with the exception of from May, 1948 until the following June.

Q. Were you chairman of the board of elections of Vance County at the time that the jury list was prepared for the box for 1949?

A. Yes.

Q. Did you have the registration books in your custody at that time?

A. Yes.

Q. Did you during that period of time turn the registration books over to any tax official or register of deeds of Vance County?

A. No, sir.

Q. Did they have access to those books for the purpose of copying them?

A. No, the law prohibits anything other than candidates.

Q. Where did you keep them?

A. I kept the old books, before the 1949 Legislature, in the vault of the Clerk of the Superior Court where the [fol. 68] statute provides it should be and no one has

access to those books except the Clerk, who is custodian. The 1949 Legislature placed them in custody of the Chairman of the Board.

Q. During 1949 you had the registration books in your custody?

A. Yes, sir.

The Court: So far as you know they were not used by any person for the purpose of getting names for jurors?

A. No, sir.

Q. Hear any talk about it?

A. No, sir.

Cross-examination of D. P. McDuffy.

By Mr. Taylor:

Q. You are Mr. Cooper?

A. McDuffy.

Q. When did you take over?

A. About six years ago and served until the primary two years ago, in 1948. Dropped out and stayed out two months and then came back.

Q. When did you go back as chairman of the board?

A. August of 1948.

Q. And during that interim Mr. Cooper was chairman?

A. Yes.

Q. You know whether or not your name is listed by the Secretary of State as chairman of the Board?

A. I don't know what he does but I communicate with the State Board.

[fol. 69] Q. You do know you were subpoenaed by the State?

A. The Marshal brought it to me along with the deputy sheriff knowing I was chairman at the time and in all probability I take it counsel got the information somewhere that J. C. Cooper was at that time and it simply hadn't been changed.

Q. I got it from the North Carolina State Manual for 1949.

A. I wrote you to that effect.

Q. How long a period of time did Mr. Cooper serve as chairman?

A. He served from June, 1948 until May, 1949 and resigned to run as Mayor of Henderson.

Q. You don't know whether this jury list was prepared before or after that?

A. I don't know when prepared but the registration books were in the vault of the clerk of the superior court and he was custodian of those. The county commissioners had nothing to do with it. No one except the chairman of the board of elections.

Q. When did you get those books into your personal possession, from the time you came back?

A. Immediately they were in my custody.

Q. That is in June, 1948?

A. Probably it was.

Q. I am trying to determine the year. Do you say it was 1948 or 1949?

[fol. 70] A. From June, 1948 until May, 1949 when Cooper was out.

Q. You got those books in your possession after June, 1949?

A. In my possession or Cooper's possession. Board of commissioners never had their hands on those books relative to selection of jury.

Q. You got possession after June, 1949?

A. Yes, sir.

Q. You don't know who had access to them prior to that time?

A. I know the clerk of the superior court was custodian.

Q. Of your personal knowledge you don't know who may have had access to them?

A. I didn't question the clerk of the court.

Q. To the best of your recollection you don't know who had access prior to the time you got them back in June, 1949?

A. I know the books are out yonder in the car now and I know they were in the vault of my county.

The Court: You don't know what happened while the clerk had them?

A. No, sir.

Q. Do you know anything about the preparation of the jury list?

A. No, sir.

Q. Are your registration books kept according to race?

A. Yes, every man's name is written on there and if he is white he is marked white and if he is colored he is marked colored and in that way I can tell you the number in the county, both white and colored, democrats and republicans. [fol. 71]

Q. You know how many registered voters in Vance County?

A. Yes, sir.

Q. How many?

A. There may be the least variation just before the general election because there is permissible dates for transfer of those qualified.

Q. As of June, 1949?

A. I can't tell you. This was a new registration in 1950.

Q. This list you have was made subsequent to June, 1949?

A. As a result of the 1949 Legislature we had a new registration in 1950. The last new registration was in 1946. Probably fifteen thousand on those books. Some moved away and died.

Q. I want to know if you know how many registered voters?

A. Usually vote five thousand. I would say probably sixty-five hundred on. We have the biggest registration now that we have ever had.

Q. Could you approximate of that number how many were colored?

A. I would say about the same proportion now, about 690 colored now and about 7000 white.

Q. And out of the total you have approximately 690 colored?

A. I can give you the exact number. We have 8000 now, 675 colored. About the same proportion is the way it runs.

Q. For how many years has that been true?

A. Well, that is dependent upon whether anybody gets re-elected in the primary, if they want a bunch of colored [fol. 72] people to vote for them, if somebody becomes active. Two years ago in one precinct in my county one or two people got pretty active around colored people and put a bunch on the books. When left alone in 1950 nothing

like that number came back to get on the book, I would say the 1943 had in all probability more colored people than in 1950.

Q. How many voting precincts you have?

A. Thirteen up until this past May. Dropped one and added two more.

Q. In 1949 you had thirteen?

A. Yes.

Re-direct examination of D. P. McDuffy.

By Mr. Rhodes:

Q. The 1949 tax list of course was for those people who listed their taxes in January, 1949. Now when they made up the jury list from the 1948 tax list did they at that time use your registration books in making up the list?

A. No, sir.

Q. You were in custody of the registration books in June, 1949?

A. Yes, sir.

Q. Did they use the registration books in 1949 in preparation of the jury list?

A. No, sir.

Mr. Rhodes: I would like for the record to show that counsel for petitioners did not subpoena Mr. McDuffy or any other election official.

[Fol. 73] The Court: The following records are im-
pounded:

The jury boxes, No. 1 and No. 2;
13 Registration books of Vance County 1940;
Tax ledger 1948;
Commissioners' minute book No. 90;
Superior Court minute docket No. 23.

Court adjourned at 5:00 o'clock P.M. January 3, 1951, and
re-convened at 10:00 o'clock A.M., January 4, 1951.

The petitioner is before the Court in person and by coun-
sel.

The jury box No. 1 is opened and Mr. H. M. Robinson,
Register of Deeds of Vance County, proceeds to call all the

names in said box: (By stipulation the court reporter is not to list the names.)

H. M. ROBINSON, recalled:

Direct Examination.

By Mr. Taylor (continued):

Q. Before we began the count of the scroll we were trying to determine the method you used in preparing jury list and you stated that you took the tax list and began with Henderson Township and went down the tax book and withdrew from the tax book names of certain people and put them on the list you proposed to give to the commissioners to draw jurors?

A. Put it on the list I gave to the commissioners.

Q. I understood you to say you excluded some people. [fol. 74] You didn't take every name you found on the list?

A. No, I don't think I took every name.

Q. I want to know on what basis you eliminated names you omitted as you went down to select the names. It has become pertinent that we know that.

A. I don't know that.

Q. All you know is you just took some names and some you didn't?

A. I didn't copy every name I don't think.

Q. Do you recall that you copied a majority of the names, or ninety percent, or eighty percent?

A. I don't know what percent.

Q. You can't approximate the percent?

A. No.

Questions by the Court:

Q. Were you told by anybody, commissioners or anyone, to select a certain number of names?

A. No, sir. Just told me to make a list of names from the book and present it to them.

Q. They didn't intimate or indicate to you how many names they wanted?

A. No, sir.

Q. Can you state to me now whether it is true that you

only selected the names of those persons that you knew or felt in your own mind were qualified to serve?

A. No, sir. I put some on there I didn't know.

[fol. 75] Q. How did you arrive at that?

A. Well, they had property there and I put them on there for the commissioners to decide whether or not they were fit for jury duty. I didn't try to decide on anybody.

Q. They wanted you to give them a list from which they could make up the list?

A. Yes, sir.

Q. You went through the tax book and generally speaking you took those persons who listed say above or more than the average property?

A. I got most of the real estate owners and majority of the ones that listed right much personal.

Q. Did that apply to both races?

A. Yes, sir.

Q. You didn't limit it entirely to real estate owners?

A. No, sir.

Q. When you got away from real estate you limited it to those who owned considerable personalty?

A. Yes, sir.

Q. Both white and negroes?

A. Yes, sir.

Direct examination:

By Mr. Taylor (continued):

Q. You didn't follow any definite system?

A. No more than I just told you. I just made a list for the commissioners.

[fol. 76] Q. In choosing the names you put down such names as you thought you should put on the list you were going to give them. I think that must be obvious if you had no particular basis for doing it. If you came to a particular name you put it down and if you didn't want to you didn't put it down.

A. I made the list just as I told the Judge.

Mr. Taylor: We are only interested in getting the total number of people on the tax book as appears as far as our percentage is concerned.

The Court: You have that privilege of developing what you want to and the respondent can do the same. Then the Court can get in what it thinks will be helpful.

Questions by the Court to the Witness Robinson:

Q. When you were looking over the list of the tax book did you notice any instances of corporations being listed?

A. Corporations in the front.

Q. They are not with the individual tax listers?

A. No, sir.

Q. You remember nothing any person who had moved from Vance County?

A. Some moved away and some died.

Q. When you made up the list you didn't put them on?

A. No, sir.

Q. You left them out?

A. I tried to.

[fol. 77] Examination by Mr. Taylor (continued):

Q. Can you recall how many such people there were?

A. I do not.

Q. Don't have any idea how many you came across?

A. No.

Q. Would you say as much as fifteen or twenty-five?

A. I wouldn't say any number because I don't know.

Q. You don't know that you eliminated any on that basis?

A. If I saw any I did.

Q. Do you recall whether you saw any?

A. I don't know about it.

Q. Did you know Reverend T. J. Walker?

A. I did.

Q. You know he is dead?

A. Yes.

Q. Explain how his name got in the jury box. Did you know he was dead in 1948?

A. I don't know whether he was or not.

The jury boxes No. 1 and No. 2 are delivered to Mr. H. M. Robinson, Register of Deeds;

The county commissioners' minute book and the election books are delivered to Mr. D. P. McDuffy;

The Superior Court Minute Docket and the tax book are delivered to Mr. H. M. Robinson; Register of Deeds.

The hearing of this case is continued until Tuesday, January 23, 1951.

[fol. 78] The hearing of this case was resumed on Tuesday, January 23, 1951.

The petitioner is before the Court in person and by counsel.

The Warden, Mr. J. P. Crawford, is represented by J. E. Lowery, Guard, and S. B. O'Neal, Transfer Officer.

All counsel as appear of record were present.

H. M. ROBINSON, recalled.

Cross-examination.

By Mr. Peters:

Q. When you were on the stand before I understood you to say that the names that went in the jury box were taken from the tax book?

A. Yes, sir.

Q. Were any of them taken from any other source?

A. No, sir, not that I know of.

Q. Did you testify before as to the number of names on the tax book?

A. I don't think so.

Q. Mr. Robinson, I understood you to testify on your direct examination that in making up the jury list from the tax book you used only the names of those who owned real estate and/or considerable personal property? Is that correct?

A. I don't think it is left entirely to that. I made the list from the tax book and turned it over to the commissioners.

[fol. 79] The Court: What criterion or standard did you use in selecting the names that you put on this list? You didn't put them all?

A. No, sir.

Q. Which ones did you put on?

A. Mainly the ones that owned property.

Mr. Peters continues:

Q. In putting on the names of those who owned property did you put on the names of white payers that owned property?

A. Yes, sir.

Q. And the names of colored payers that owned property?

A. Yes, sir.

Q. Did you make any distinction between white people and colored people that owned property?

A. No, sir.

Q. You omitted those whom you knew to be under twenty-one?

A. Yes, sir.

Q. And those you knew to have something wrong with them, either old age or mentally wrong?

A. Yes, and I didn't put a preacher on there if I recognized him.

Q. Why?

A. I understood they were not supposed to serve on the jury.

Q. Exempted by statute?

A. Yes, sir.

[fol. 80] Q. That applied to both white and negro preachers?

A. Yes, sir.

The Court: You didn't put any doctors on there?

A. I didn't intend to.

Q. You didn't put any lawyers on there?

A. No, sir.

Q. How about firemen?

A. I don't know about that.

Q. Were there any others you didn't put on the list because you knew or thought they would be excused by statute?

A. Not that I know of.

Q. I am asking you now in regard to the list you made up and not as to the list finally approved by the commissioners. Were any names left off because of lack of good moral character?

A. No. I didn't consider that.

Mr. Taylor: I have tried to get from Mr. Robinson the definite method he followed. I understood him to say on the

last examination he simply took those who had right much property and that was his only basis. I am interested in the mechanics he used.

The Court: I suggest you ask him such questions as would clarify it.

Redirect examination.

By Mr. Taylor:

Q. Mr. Robinson, you testified you don't know how many names on the tax book?

A. I don't know how many.

[fol. 81] Q. I think you will find when this compilation is through that there are about eight thousand names. You know from our examination of the jury boxes the last time that there were some two thousand names in the jury boxes.

A. I don't know how many.

Q. The record will show that. We will stipulate to the fact that there are some eight thousand names in the tax book and two thousand in the jury box. I am interested to know how you eliminated the other six thousand?

A. I didn't eliminate them. I simply made a list and turned — over to the commissioners and the list they turned back to me I cut up and put in the jury box.

Q. How did you arrive at them?

A. I made a list and turned it over to the commissioners.

Q. It's obvious that you eliminated six thousand names?

A. I told you I didn't eliminate them.

The Court: If you selected two thousand out of eight thousand you failed to put six thousand in there. What he wants to know is how did you go about selecting the two thousand you put in there.

A. I just made a list.

Q. Did you undertake to put down those you knew personally.

A. No, sir. I went down the list and got the ones with property and turned — over to the commissioners for their approval. They went over it and gave it back to me and told me to cut it and put it in the jury box and I did.

[fol. 82] Questions by Mr. Taylor, resumed:

Q. Did you have instructions as to the number of names in the jury box?

A. No, sir.

Q. Did you start out by setting up a certain number?

A. No, sir, I just went through the book and got the names and shut it up and carried the list to the commissioners the first Monday and glad to get rid of it.

The Court: You had no standard to go by. You have eight thousand names on the tax book. That is eight thousand people owning property and paying taxes on it. You went through that book having eight thousand names and put two thousand in the box. You say you didn't stop simply because you had a sufficient number because you said you didn't know how many you had?

A. No, sir, I didn't have any idea how many I had.

Q. You told me you didn't just put those you knew personally but put those who owned considerable real estate or personal property?

A. Yes, sir.

Q. What counsel would like to know and what I would like to know is why were there only two thousand when you got through?

A. Well, I don't know.

Mr. Peters: There is no definite information that there were two thousand when he got through with them but [fol. 83] there were two thousand when the commissioners got through with them.

The Court: I would be safe in saying that the list he prepared was what went in there. I will assume that the list he prepared was probably or substantially the list of jurors that went in the box.

Mr. Rhodes: The names on tax list doesn't always list taxpayers because a large number just list poll tax. You are trying to say he has eight thousand names on the tax list and therefore Mr. Robinson eliminated a large number of taxpayers. He says he took the names of property owners, either real or personal property. I would assume a large number of the eight thousand names just listed for polls.

Mr. Taylor: I don't think the statute says eliminate the ones that pay poll tax.

The Court: We are not interested in the statute now but there were six thousand excluded. Mr. Rhodes says it doesn't mean six thousand who paid taxes on property. Mr. Robinson's statement was that he put on there property owners. That would mean he left out those who paid poll tax.

Mr. Brogden: There is no necessity of putting every tax payer in the box. I don't think the law requires you to double up and put everybody in there if you have a number that is sufficient.

[fol. 84] Mr. Taylor: I want to know on what basis he eliminated the six thousand. I will accept what he says.

Q. Mr. Robinson, counsel for respondent suggested that in picking these names from the tax book that you eliminated certain people on account of lack of character and insufficient intelligence.

A. Not that I knew of.

Q. You didn't exclude anybody on account of lack of sufficient intelligence and lack of character?

A. I didn't have anything to do with that.

Q. Did you have instructions from the commissioners?

A. Instructed me to make a list and bring it at the next meeting.

Q. Tell you where to get that list?

A. Tax book.

Q. Specify what tax book?

A. I don't know whether they said go to the tax book but that is the way it has been done since I have been there.

Q. You had done it before?

A. Yes.

Q. You know the population of Vance County?

A. Yes.

Q. What is it?

A. A little over thirty thousand.

Q. The figures will show about eight thousand people on [fol. 85] the tax book. That leaves twenty two thousand in Vance County who are not on the tax book.

The Court: That is a matter for calculation.

Q. Those people whose names are not on the tax book you didn't deem it necessary to go to other sources to get persons for jury service?

A. Didn't have anywhere to go to.

Q. You are aware of the fact that voting registration books are kept in the county?

A. Yes.

Q. You didn't resort to those?

A. No.

Q. You went to no other source other than the tax book?

A. I did not.

Q. Have you been register of deeds for eighteen or nineteen years?

A. Yes.

Q. Prior to the calling of the special venire in July, 1949 to sit in this case had you ever known a negro to be called for jury duty in Vance County?

A. I don't know.

Q. To the best of your recollection?

A. I don't know whether one had been called or not.

Q. Your office is in the courthouse building?

A. It is.

[fol. 86] Q. I ask you if it is not common knowledge that prior to the calling of this special venire in July, 1949 no negro has served on grand jury or any jury in Vance County for the past forty years?

Objection by Respondent overruled.

A. I don't know of my own certain knowledge.

Q. I ask you if it is not generally known that negroes have not served on juries in Vance County for the last thirty or forty years?

Objection by Respondent overruled.

A. What is the question?

Q. Is it not generally known in Vance County that negroes had not served on juries in Vance County prior to the calling of this special venire for the last thirty or forty years?

A. I have no knowledge of that.

That is all.

Recross examination of H. M. Robinson.

By Mr. Peters:

Q. Mr. Robinson, do you know whether or not any negroes have served on the jury, either grand or petit jury, since this box was drawn in 1949?

A. Some served the last term of court.

Q. Know how many?

A. No, sir.

Q. What do you mean by last court?

A. January, 1951.

[fol. 87] Q. How about 1950?

A. One served in October. I happened to know the man.

Q. You know whether he served on the grand jury or petit jury?

A. One on the grand jury, William Crews.

Q. You know of any others that served in 1950?

A. Phil Reed served in one court. I wouldn't say which it was.

Q. How about 1949, after this jury box was prepared in July, 1949 any negroes serve on the grand or petit in 1949?

A. I wouldn't say definitely.

Q. You are register of deeds?

A. Yes, sir.

Q. Does your job require your presence in the court room?

A. No, sir.

Q. You have occasion to go to the courtroom?

A. Very seldom. Just for curiosity.

The Court: Do you attend the calling of a special venire?

A. Sometime and sometime I don't.

Q. Either you go or you send a deputy?

A. Yes, sir.

Q. You remember whether you were in the courtroom when this venire was drawn?

A. That was drawn in my office but I was not present.

Q. Do you know whether or not there are any negroes on the grand jury at the present time?

A. I do not.

[fol. 88] Re-redirect examination:

Q. How many negroes do you say have been called for jury duty since July, 1949, aside from the special venire?

A. I don't know. I know those called by name because I know them personally.

Q. What is the total of those?

A. Two or three.

Q. You know how many jurors have been called altogether during that time?

A. I don't. Don't call the same number each time.

Q. Would your records show that?

A. They would.

Q. You have your minute book here?

A. It's here somewhere.

Mr. Brogden: Where you would go to get that would be the Clerk's minute book.

Mr. Taylor: I want to see what his book shows.

The Court. Do you have your book?

The Witness: Yes, sir.

The Court: Look and see.

Q. What was the first court held in Vance County after July, 1949?

A. October.

Q. Tell us how many jurors were drawn for that term of court?

A. Fifty-four for the first week, twenty-nine for the second.

[fol. 89] Q. Do you have any knowledge of how many of those were negroes?

A. No, I don't know.

The Court: You said you knew William Crews?

Mr. Brogden: That was October, 1950.

Q. Would you recognize the names if you saw any of them that you knew?

A. I might.

Q. Would you look and see if you recognize the names of any negroes?

A. I don't know whether they are colored or not.

Q. You don't recognize any of them as colored?

A. No.

Q. From drawing the slips from the jury box you recognize the names of seventy-five percent of the people, white and colored?

A. Good many of them.

Q. What is the next term of court?

A. January.

Q. How many jurors and do you know whether any of them were colored?

A. Fifty.

Q. How many of those were negroes?

A. I don't know. John Crudup and we have a white and colored one.

Q. What township is he in?

[fol. 90] A. Both in Henderson No. 1.

Q. What is the one you have there?

A. Henderson No. 1.

Q. What is the next term of court?

A. March, two weeks. Forty-eight for the first week, thirty-seven for the second.

Q. Do you recognize any of those names as being names of negroes?

A. I think some of them are colored.

Q. Which ones?

A. Clarence Green, from Henderson No. 1, and Beulah Hanks 8.

Q. What is the next term of court?

A. June. Thirty-six the first week, twenty-four the second.

Q. How many of those are negroes?

A. I don't know.

Q. Do you recognize the names of any of them as being negroes?

A. I do not.

Q. What is the next term of court?

A. October.

Q. How many jurors?

A. Fifty-five the first week, twenty-five the second.

Q. You recognize the names of any of those as being negroes?

A. William Crews, Township 6, is colored, Thad Jackson, Township 1 is colored.

[fol. 91] Q. What is the next term of court?

A. January of this year.

Q. How many jurors drawn for that term?

A. Seventy-two.

Q. How many of those were negroes?

A. Cyrus Boyd, Township 6, is colored; Phil Reed, No. 6, is colored; Robert Hawkins, No. 1, is colored I think. The only Robert Hawkins I know is colored. I don't know a Robert Hawkins white.

Q. You say you know most of the people in the county?

A. Yes. R. H. Wimberly No. 1 is colored. That is the last court.

The witness H. M. Robinson is excused.

F. H. ELLINGTON, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. You are chairman of the Board of commissioners?

A. Yes.

Q. How long have you held that office?

A. This is the second term.

Q. When did you go in?

A. Three years ago this past December.

Q. You have been chairman for three years?

A. No. Served one term as chairman and started the second one.

Q. As one of the members of the board it is your duty to participate in the selection of persons selected for jury service in Vance County?

[fol. 92] A. Yes.

Q. Do you recall the purge of the jury box in the summer of 1949?

A. Yes, my first experience.

Q. When was that jury box purged?

A. July.

Q. Tell us the mechanics of it.

The Court: How did you do it?

A. The register (of deeds brought us a list of names printed on paper and it was handed to the entire board. We went over it.

Q. Were you the chairman then?

A. Yes, sir.

Q. Do you recall whether or not your board gave the clerk or register of deeds any instructions on how to prepare this list?

A. No, I don't recall.

Q. State what happened?

A. It was the customary rule, I suppose, to bring the names in. That was the way it was done. Each commissioner went over it. The Commissioners taken the list and went over it in a body at a meeting.

Q. You represent any particular township?

A. Yes.

Q. Give me the names?

A. Nutbush, Middleburg and Sandy Creek.

Q. You got a list from the register of deeds?

A. Yes, sir.

[fol. 93] Q. What did the commissioners do with it?

A. Looked the list over and went through it.

Q. Did you approve the list at that time?

A. Yes, some of them.

Q. How many did you approve?

A. I don't remember.

Q. You know how many you eliminated?

A. No, I don't.

Q. You have any idea how many you eliminated?

A. No, sir.

Q. Have any idea how many the clerk to the board brought in to the meeting?

A. No.

Q. How many did you strike off?

A. I don't remember but some were struck off.

Q. Were there ten, fifteen or a hundred?

A. I don't imagine over ten or fifteen.

Q. You didn't strike over ten or fifteen?

A. Didn't strike that many.

Q. The whole board didn't strike more than ten or fifteen?

A. It was passed around to each member and each man who knew a person not capable of sitting on the jury marked through it.

Q. What did you do about those you didn't know?

A. Didn't do anything.

Q. Left them on?

A. Absolutely.

[fol. 94] Q. What did you do after that?

A. That was all. The list was turned back to the register of deeds as clerk to the board.

Q. About how long a time did the board spend in considering that list?

A. From forty-five minutes to an hour.

Q. How long was your meeting?

A. I don't remember that particular date. We met at ten o'clock and got through by lunch. A lot of times we have to go back.

Q. You spent about forty-five minutes or an hour looking over the list?

A. Something like that.

Question by the Court:

Q. What do they pay the county commissioners of Vance County?

A. The chairman gets a hundred dollars a month and the additional four members get twenty-five.

Q. Regardless of how many meetings?

A. Yes, sir.

(Questions by Mr. Taylor continued.)

Q. What did you do with this list after it was completed by the board?

A. Turned it back to the Register of Deeds.

Q. You ever see it again?

A. No.

Q. You know what happened to it?

A. No.

[fol. 95] Q. How many copies of the list did you have?

A. I don't know. It must have been as many as five.

Q. Were there carbon copies or all originals?

A. There were original—

Q. You mean printed five times?

A. It was printed on four or five papers—

Q. You had one list with five or six sheets?

A. That's right.

Q. You didn't have five copies?

A. I wouldn't think so.

Q. Did you get the names of people in your district?

A. No, I got them and others to. The other men went through the list I had.

Q. And the ones you knew personally and the others knew personally you left them there or struck them out?

A. Lot of them I didn't know. One on there we did know and incapable of sitting on the jury he was marked through.

Q. It was based on what the commissioners knew of the people?

A. That's right.

Q. I think you said after the sheets left that meeting you never saw them again?

A. That's right.

Q. You don't know of your own knowledge how many were put in the box?

A. No.

[fol. 96] The Court: You remember how many you struck?

A. No, sir.

Q. Did you strike off any negroes?

A. Not to my knowledge.

Q. Did you strike off any person's name because of his race?

A. No, sir.

Q. You say you don't recall how many names the register of deeds brought to the meeting?

A. No, I don't.

Q. Did you or any other member of the commissioners inquire as to the source of the names?

A. No.

Q. You don't know where he got the names?

A. No, sir.

Q. Don't know how many he included?

A. No.

Q. And you made no inquiry?

A. No.

Q. And you don't know of your own knowledge whether the names you gave back to the clerk were the names that went in the box?

A. No.

Q. Mr. Ellington, you stated the box was purged in July, 1949?

A. Yes.

Q. Tell what you did in purging it, or what constituted that purge.

[fol. 97] A. Just what I told you. The register of deeds brought the names in there. It was made up and he was instructed to put them in the box, take the old names and do away with them and put the new names in the box. He was entrusted for years before that to do that and I think what he did was right.

Q. You didn't see him do that?

A. I did not.

Q. How long you lived in Vance County?

A. Thirty three years.

Q. What sort of business are you in?

A. I try to farm.

Q. Prior to the calling of this special venire in 1949 to serve in this case had you ever known a negro to serve on a jury in Vance County?

A. Not to my knowledge.

Q. I ask you is it not more or less common knowledge in Vance County that no negro has served on juries prior to this time?

A. Not to my knowledge.

Q. Isn't it the general reputation in Vance County that prior to the calling of this special venire negroes had not served on juries in Vance County for the last thirty or forty years?

A. Yes.

No further questions.

[fol. 98] Cross-examination of F. H. Ellington.

By Mr. Rhodes:

Q. Mr. Ellington, Mr. Robinson is clerk to your board of county commissioners?

A. Yes, sir.

Q. When you got ready to purge this box you requested him to furnish you or the board of county commissioners with a list from which the board of county commissioners selected the names to go in the box?

A. Yes, sir.

Q. You know for how many years he has been doing this?

A. No, sir, I don't. Mr. Robinson has been register of deeds for quite a while.

Q. When he brought the list in to you you took the list and went around to each commissioner and each commissioner checked the list?

A. Yes, sir.

Q. And then when the list had been checked it was then turned back to Mr. Robinson with instruction to place those names in the jury box?

Objection by Petitioner.

Q. After the list had been checked by the board of county Commissioners I ask you what instructions, if any, you gave to Mr. Robinson as to what he was to do with those names?

A. I don't remember the exact words but it was understood he would cut them up in strips and put them in the box.

[fol. 99] Q. Did you instruct him to put them in the box?

A. Yes, sir.

Q. Then the first list drawn out of that box after it was purged was at the trial of this case?

A. I don't know. I wasn't present.

Q. Were you present at the selection of the special venire to go to Bertie County?

A. No, sir.

The Court: When was it drawn?

A. August, 1949.

Mr. Brogden: That was the first list drawn out of the box.

Q. Were you present at the hearing in Bertie County?

A. Yes, sir.

Q. I ask you whether or not you knew of any dots which appeared on the names of any list prior to the time they were drawn out of the jury box in Vance County?

A. No, sir.

Q. Did you put any dots before or after the name of any person?

A. No, sir.

Q. See any member of the board of county commissioners do that?

A. No, sir.

Q. In the selection of the names which went in the jury box state whether or not any consideration was given as to whether that person was a negro or a white person?

A. No, sir.

[fol. 100] Q. State whether or not you had any way of knowing whether or not names put in the box or taken out of the box were either negroes or white except your personal knowledge of the man?

A. No, sir, that was the only way I could identify them.

Q. What was the basis of the selection of the names that went in the box? What did you take into consideration?

A. Well, a man's reputation, whether I knew him, or whether I knew the man guilty of being in court a lot, or physically handicapped. Of course some of them might have been put in like that but if so I didn't know the man.

Q. Do you know whether or not any negroes have served on the juries in Vance County since July, 1949?

A. Yes, sir, they have.

Q. You recall what their names were?

A. There is one particular name, Mose Vincent.

Q. You know whether or not there are any negroes serving on the grand jury in Vance County now?

A. The grand jury was made up for this last January Term of court and I was not present and don't know.

Q. Were any negroes serving on the grand jury prior to 1951?

A. I couldn't say.

Q. Do you have occasion to go in the courtroom during the trial of cases very often?

A. Not very often unless some cause to go.

Q. When you go in the courtroom do you make any special [fol. 101] observance as to who is sitting on the jury?

A. No, sir.

Q. Mr. Ellington, you are not in position to say there are not as many as three negroes serving on the grand jury in Vance County?

A. No, I wouldn't say because I don't know.

Mr. Brogden: That have served out of this particular box?

A. I don't know.

Q. You know of any effort having been made in Vance County to discriminate between negroes and whites in placing names in the jury box?

A. No, sir.

Q. Has the question ever been discussed before the board of commissioners as to whether a man is negro or white, or to throw it out?

A. No, sir.

Redirect examination of F. H. Ellington.

By Mr. Taylor:

Q. Mr. Ellington, you stated in answer to Mr. Rhodes that you didn't know of any effort made to discriminate against negroes in inclusion of persons in the jury box?

A. No, they have not.

Q. How do you account for the fact that they have not been put in there before?

A. I don't know.

Q. You don't know how many names the register of deeds brought in?

[fol. 102] A. No.

Q. You wouldn't think eight thousand?

A. No.

Q. You wouldn't think five thousand?

A. No, I would not.

Q. What is your best estimate of the number of names he brought in at this meeting?

A. Possibly thirty-five hundred.

Q. Do you know the approximate population of Vance County?

A. Thirty one or two thousand, thirty odd thousand.

Q. Did the board make any effort to find out how he arrived at thirty five hundred odd names?

A. No.

Q. The board just accepted what he brought in?

A. Yes.

Q. The board made no effort to find out whether persons beside what he brought in should have been put on?

A. No.

Q. You stated you had no way of knowing whether a white or colored person on the jury scroll?

A. No.

Q. You stated in answer to Mr. Rhodes question you didn't know anything about the dots on the ~~scroll~~?

A. Never heard of it.

Q. When did you first have knowledge of it?

A. Down in Bertie.

Q. Did you notice any periods or dots on the slips he [fol. 103] brought to you?

A. No, sir.

Q. You know whether any on there?

A. No.

Q. You don't know whether the scrolls in the jury box were the names of the list you got?

A. Look like the same.

Q. If a dot or period was there, and that has been established as a fact, you don't know how they got on there or who put them on there?

A. No.

Q. You were present in court here about two weeks ago?

A. I was here one morning.

Q. You were present at the trial in Bertie County?

A. Yes, sir.

Q. You know it was established that dots were by the names of colored people on that scroll?

A. Some of them.

Q. You were not present when we drew the names in this court?

A. No.

Recross-examination of F. H. Ellington.

By Mr. Rhodes:

Q. Did you see any dots on the list when you went over it?

A. If I did I didn't pay any attention to them.

Q. You looked at the names on the list?

A. Yes.

[fol. 104] Q. And at the time you were preparing them to be put in the jury box did you see any dot before or after the names of the persons?

A. No, sir.

Q. Did you ever discuss with Mr. Robinson, the clerk to the board, the matter of placing only names of white people on the list of names to be submitted to the board of county commissioners?

A. No, sir.

Q. Did you instruct him to put any dots on the name, before or after?

A. No, sir.

Q. Did you ever suggest to Mr. Robinson to use any means or method to enable the board of county commissioners to know whether a man was white or black?

A. No, sir.

3 Redirect examination.

By Mr. Taylor:

Q. How do you account for the fact that names of all the negroes had dots after them and none after the whites?

A. I don't know that.

Q. The record shows that. Can you account for it?

A. No.

Q. The board left it up to the discretion of Mr. Robinson how to do it?

A. Yes.

No further questions.

[fol. 165] Recross-examination.

By Mr. Rhodes:

Q. You testified that you received a salary of a hundred dollars a month as chairman of the board?

A. Yes, sir.

Q. How long have you received that?

A. Twelve months the first of last December. Going in thirteen months.

Q. You didn't receive it at the time the jury box was drawn up?

A. No, sir.

The Court: What did you receive before you received a hundred dollars a month?

A. Twenty-five dollars a month.

Q. When you got to be chairman you got a hundred?

A. Yes, sir and I was made chairman in December, 1949. I reckon it was.

MARK WOODLIEF, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. What official capacity do you hold in Vance County?

A. Member of the board of commissioners.

Q. How long have you held that position?

A. This is the third year.

Q. You hold any other public office in Vance County?

A. No, sir.

[fol. 106] Q. As a member of the board of commissioners of Vance County it is your duty to take care of the matter of calling persons for jury duty in the county assisting your co-members in the preparation of the jury list?

A. That's right.

Q. Do you recall the alleged purge of July, 1949?

A. I think so.

Q. Can you go on and tell us just what took place in that purge?

A. Had a new list of jurors, looked over them and approved of them and gave them to Mr. Robinson and told him to take further charge of them.

Q. What did you do in approving of them?

A. To see if any of them dead, or insufficient to be on the jury so far as we knew them.

Q. How long a period of time did you use to determine that at your meeting?

A. I couldn't hardly say. Sometime longer than others.

Q. At this particular meeting?

A. I would say about an hour.

Q. How many names did you strike from the list, if any?

A. I don't remember striking any.

Q. What townships did you represent?

A. Kittrell and Watkins.

Q. Is that all you did with respect to that purge?

[fol. 107] A. That's right.

Q. You have no idea how many names were on the sheets?

A. No, I don't.

Q. You can't approximate it?

A. No, I didn't count them.

Q. You don't know whether two thousand, four thousand or five thousand?

A. No.

Q. Did you or any other member of the board make any inquiry of the register of deeds whether he had included all persons that should have been included?

A. No, I didn't ask him.

Q. Just left it to his discretion?

A. Yes.

Q. When you got through inspecting the list you returned it to the register of deeds?

A. That's right.

Q. You know of your own knowledge what he did with it?

A. No.

Q. You haven't seen it since?

A. No, not unless it is after it was in the box.

Q. You yourself didn't have anything to do with it?

A. No.

Q. You say you didn't see the slip again until after it was in the box?

A. I said I hadn't seen it unless it was in the box.
[fol. 108] Q. You don't know what happened to it?

A. No.

Q. How long have you lived in Vance County?

A. All my life.

Q. How long is that?

A. Fifty four years this coming March.

Q. Prior to the drawing of this special venire in 1949 had you ever known a negro to serve on a jury in Vance County?

A. There are reports—

Q. Of your own knowledge?

A. No, I have not.

Q. Is it not more or less common knowledge that in Vance County prior to the drawing of this special venire negroes had not served on the jury in Vance County for thirty or forty years?

A. I don't know how long.

Q. But it is common knowledge a long time?

A. That's right.

Cross-examination of Mark Woodlief.

By Mr. Rhodes:

Q. This list was brought by Mr. Robinson according to the instructions of the board of county commissioners?

A. Yes, sir.

Q. Brought to the board and the board checked the list?

A. That's right.

[fol. 109] Q. At that time was there anything on the list which would indicate to you whether a man was a negro or white man?

A. No, sir.

Q. Was the question discussed at that time as to whether or not any particular person was negro or white man?

A. No, sir, or I didn't know it.

Q. Was the race question raised in the purging of this box?

A. No, sir.

Q. When you looked over this list did you see the dots before or after the names of any persons?

A. I didn't see any dots.

Q. If there were any dots upon that list at the time submitted to the board did it indicate to you as to whether or not the person before or after whose name it appeared was a negro or white man?

A. No, sir, I wouldn't have known the difference. I just knew the man.

Q. I will ask you to state whether or not the county commissioners of Vance County in purging the jury placed in box No. 1 the names of all persons whom the board determined to be residents and taxpayers of Vance County who had paid their taxes for the preceding year and were of good moral character and sufficient intelligence irrespective of race?

[fol. 110] The Court: His question was did you do that without regard to whether a person was white or colored?

A. Yes, sir, put them all in.

Q. To your knowledge was the name of any negro eliminated from the list submitted to the board?

A. No, sir.

Q. You stated that the list was turned back to Mr. Robinson with instructions that he place those names in the jury box?

A. Yes, sir.

Q. Do you know whether or not there are any negroes serving on the grand jury in Vance County now whose names were drawn from this box?

A. No. The only way I have of knowing is seeing the names in the papers drawn for jury. If I happen to know him I knew whether he was white or colored.

Q. Have you been in the courtroom in criminal term of court?

A. Not unless I was a witness.

Q. You don't know of your own knowledge whether any negro has ever served on any jury before or after this box?

A. Yes, I know some but I can't recall their names. Just seeing it in the papers.

Q. But you haven't seen them either before or since?

A. No, sir.

Q. And therefore if there were negroes who served on the jury since the 1949 box you have no more knowledge [fol. 111] about that than you did the lack of negroes who served prior to the 1949 box?

A. No, sir.

Re-direct examination of Mark Woodlief.

By Mr. Taylor:

Q. The truth of the matter is that in this so-called 1949 purge the commissioners left the mechanics up to the register of deeds as they had prior thereto?

A. Yes, sir.

Q. You didn't give him specific instructions how he should do it?

A. No.

Q. Didn't inquire of him to what source he went to get the names?

A. Yes.

Q. And passed on them?

A. Yes.

W. H. BLACKNALL, having been first duly sworn, testified as follows:

Direct-examination.

By Mr. Taylor:

Q. What official capacity do you hold with Vance County?

A. Board of county commissioners.

Q. How long have you held that position?

A. This is the second term.

The Court: Four year term?

A. Two year term.

[fol. 112] Q. You were a member of the board in July, 1949?

A. Yes.

Q. You recall the meeting at which the alleged purge of this box took place?

A. Yes.

Q. Describe what was done by the commissioners.

A. Mr. Robinson brought the list in. He was instructed to bring the list in from the tax book and he did and we looked it over and gave it back to him.

Q. How much time did you spend in looking it over?

A. I don't remember but I expect about an hour.

Q. Have any idea how many names on the list?

A. No.

Q. You can't approximate the number?

A. No.

Q. Don't know whether five, ten or fifteen thousand?

A. I wouldn't say fifteen thousand.

Q. Would you say three thousand?

A. I told you I didn't know.

Q. When you looked over the list what basis did you use, if any, in determining whose name would go in the box and whose would not?

A. If we knew one was not qualified we struck it out. Each commissioner looked the list over and if a name we knew not qualified we struck it out.

Q. Your purge was based on your personal knowledge? [fol. 113] You didn't seek any outside information from anybody?

A. No.

Q. How many lists did you have?

A. One list of the names. I don't remember how many sheets.

Q. You know whether these sheets were arranged according to townships?

A. I don't think so.

Q. Just one whole list of names?

A. Yes.

Q. Arranged according to race?

A. No, taken from the tax book.

Q. You know the tax book is arranged according to race?

A. Yes.

Q. You don't know whether he followed the setup in the tax book?

A. No.

Q. All you recall is you had one list of several sheets?

A. Yes.

Q. Know whether you had more than one alphabetical list, that is from A to Z twice?

A. I don't recall.

Q. After you looked over the list for the period of an hour you returned it to the register of deeds?

A. Yes.

Q. You know of your own personal knowledge what he did with it?

A. No.

[fol. 114] Q. You haven't seen it since?

A. No.

Q. How many names, if any, did you strike off of the list?

A. I don't remember. Maybe two or three.

Q. You recall whether white or colored?

A. No, I don't.

Q. How long have you lived in Vance County?

A. About forty years.

Q. Prior to the calling of this special venire had you of your personal knowledge ever known a negro to serve on the jury in Vance County for the last thirty or forty years?

A. I don't remember.

Q. Have you ever seen any yourself or heard of any?

A. I don't know.

Q. I am asking you for your best recollection?

A. I told you I don't know.

Q. I ask you is it not more or less common knowledge in Vance County that for the past thirty or forty years no negro has ever served on a jury in Vance County?

A. I never helped draw a jury.

Q. Isn't it common knowledge?

A. I don't know.

Q. You have lived there forty years?

A. Yes.

[fol. 115] Q. Have you ever seen a negro on the jury in Vance County?

A. No I never had.

Cross-examination of W. H. Blacknall.

By Mr. Rhodes:

Q. The list was brought to you by the clerk to the board?

A. Yes, sir.

Q. He brought the list made up from the tax list?

A. Yes.

Q. And the list circulated around to the board?

Objection by Petitioners.

Mr. Gates: I don't think it fair and competent for counsel to lead him, ask him questions and he say "Yes" and "No".

The Court: I see no objection to the cross examination so far. Just be careful about it.

Q. You stated you did mark off two or three names. You knew whether they were white or black?

A. No, I don't remember.

Q. As to the names stricken off by various members of the board, did you hear any discussion as to whether or not any of them were negroes or whites?

A. No, sir, I didn't.

Q. In going over this list did you observe any dots before or after any names of persons whose names appeared thereon?

A. No, sir.

Q. In looking at that list did you have any way to tell from the list other than your personal knowledge of the men as to whether or not the person named on the list was [fol. 116] negro or white?

A. No, sir.

Q. And that list was turned back to the register of deeds who was clerk to your board?

A. That's right.

Q. What instructions if any did you give him as to what to do with the list?

A. Didn't give him any instructions. It was customary that he should put them in the jury box.

Q. Did you ever suggest to Mr. Robinson that he in any way eliminate from the list submitted to the commissioners the names of any negroes?

A. No, sir.

Q. Ever discuss with him the question of placing dots before or after any particular name on the list?

A. No.

Q. When you passed upon that list what was the basis of your approval of the list?

A. If any commissioner knew of any cause why he didn't think a person was eligible to serve on the jury we marked it out.

Q. Did that apply to negro and whites alike?

A. Yes, sir.

Q. The action that was taken in approving this list, was that taken just by individual members of the board or by the board as a body?

[fol. 117] A. By the board as a body.

Q. Mr. Blacknall, have you ever heard the question discussed before the board of county commissioners or by the board of county commissioners as to whether or not any negro's name should be eliminated from the jury box?

A. No, I never have.

Q. Did you place all names in there irrespective of whether or not they were black or white?

A. Yes. If no cause for marking it out we left it on the list.

Q. Would you say that a person who was a negro that his name was eliminated from the box solely because he was a negro?

A. No, sir.

Q. Were you in the court room in Bertie County?

A. Yes, sir.

Q. State whether you had any knowledge of whether dots were before or after the names of any person?

A. Never heard of those dots until it was brought up in Bertie County.

Q. You now know why they were put on there?

A. No, sir.

Q. If there were any dots after the names on the list would that indicate to you whether they were black or white?

A. No, sir.

Q. You know anything about the race of persons who have served on the jury since July, 1949?

[fol. 118] A. You mean has any negro been drawn?

Q. Yes.

A. I don't remember.

Q. You don't know of your own knowledge whether negroes served on the jury or were drawn from the jury box.

to serve on the jury in Vance County either before 1949 or after 1949?

A. No, I don't.

Re-direct examination of W. H. Blacknall.

By Mr. Taylor:

Q. You say the dots on the slips in the jury box you had never seen until in Bertie County?

A. No, I had not.

Q. So they got on there after you commissioners had looked at the list?

A. I don't know.

Q. So far as your knowledge is concerned they got on there after you saw the list?

The Court: He said he didn't observe them on there. I know I wouldn't observe them on there. Your statement is you don't know how or when they got on there?

A. That's right.

Q. The commissioners gave the register of deeds no instructions but just followed the usual custom and let him make the preparation?

A. Yes.

[fol. 119] Q. Can you account for the fact that out of eight thousand people only two thousand were in the jury box?

A. No.

Q. You made no inquiry of the register of deeds why that was so?

A. No.

Q. You know any other county commissioner who did it?

A. No.

Q. You have knowledge of the approximate population of Vance County?

A. No.

Q. Or in 1949?

The Court: It is agreed it is about thirty thousand.

The Witness: It is increasing.

Q. How about the 1950 census?

A. I don't know.

No further questions.

Re-cross examination of W. H. Blacknall.

By Mr. Rhodes:

Q. To your knowledge has the name of any person been eliminated from the list of names drawn from the jury box because of any dot appearing before or after the name?

A. No, sir.

Court adjourned at one o'clock P.M. for lunch and re-convened at two-fifteen o'clock P.M.

[fol. 120] Sheriff E. A. COTTRELL, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. You live in Vance County?

A. Yes.

Q. What is your official capacity with Vance County?

A. Sheriff of the county.

Q. How long have you held that position?

A. Eight years.

Q. Prior to that did you hold any position?

A. Deputy Sheriff.

Q. Have you held any other position except sheriff and deputy sheriff?

A. No.

Q. How long deputy sheriff?

A. Twelve years.

Q. So you have been in the sheriff's department of Vance County twenty years?

A. Yes.

Q. As Sheriff of the county the matter of summoning persons to serve on the juries in Vance County has come under your jurisdiction?

A. Yes.

Q. You have been engaged in that for the last twenty years?

A. Yes.

[fol. 121] Q. Prior to the calling of the special venire in 1949 had you ever summoned a negro for jury duty in Vance County?

A. I think we have sent them cards but whether they got them I don't know. They give us a list when the county commissioners draws the jury. A child under ten years old draws the names out of the box. They write them down on a pad, give us a list and I send every one a card or deputy will send them.

The Court: How long has that been the practice?

A. Ever since before I came there.

Q. Twenty years?

A. Yes, sir.

Q. During your twenty years in the office have you of your own knowledge known of a negro called for jury duty or served on a jury in Vance County?

A. I don't know for certain but I think one or two served on there in 1948.

Q. You know their names?

A. No, I don't.

Q. Do you recall testifying in Bertie County?

A. Yes.

Q. Did you recall during that time?

A. I had heard of none but since I have been back from the information I could get one or two summoned as jurors but whether they served I don't know.

[fol. 122] Q. I am talking about back of July, 1949.

A. I don't remember.

Q. You do recall testifying before that of your own knowledge during your time as sheriff you had not known of any negro serving?

A. Not of my own knowledge.

Q. Do you think if there had been you would have known it?

A. It could have slipped my memory.

Q. You are in court every term?

A. Yes.

Q. And if there had been any negroes prior to 1949 you would have known it?

A. I think it was a Bullock that served before that time but I wouldn't be certain of that.

Q. I would like to ask you, Mr. Sheriff, is it not more or less of common knowledge that prior to the calling of this jury in 1949 no negroes served on the jury in Vance County?

A. They hadn't served on it. We had some serving on the last jury. We had three on the petit jury and one on the grand jury.

Q. That was since this special venire was drawn?

A. Yes.

That is all.

[fol. 123] Cross examination of Sheriff Cottrell.

By Mr. Brogden:

Q. You couldn't testify that you actually never saw any negroes on the jury prior to 1949?

A. I don't remember but it seems to me one or two but I am not certain.

Q. You mentioned that you had been at every term of court?

A. I haven't skipped a term of court there in twenty years.

Q. Have you seen any negroes on the jury recently?

A. Yes.

Q. What terms of court?

A. October and January.

Q. How many on the jury in October?

A. Five I think. Four I know. Three in October and four or five, I know four at the January term of court.

Q. You have any members of the negro race on the grand jury?

A. Yes, one or two and they asked the foreman to excuse them.

Q. Any of them serve?

A. Not on the grand jury. Two of them served on the October jury. Stayed there all the time.

Q. You say you send out post cards for the regular jury?

A. I send them a card. It is a double card. They sign that card that they will accept service, tear that off and return it.

Q. If the card is not returned what do you do?

A. Mark on it not served.

Q. Do you on occasions try to find them?

[fol. 124] A. If no one answers to the name the Judge has to have an excuse why they won't serve. Either sick or out of the county.

Q. You attempt to serve every one on the list?

A. Yes, sir. Sometimes the card comes back and the mail man says not to be found. Therefore we report back to the court.

Q. You haven't given instructions to your deputies not to serve people because they are of the negro race?

A. No, sir.

Q. You haven't failed to serve any one of the negro race?

A. No.

Q. You serve every one on the list brought to you?

A. Yes, sir.

Q. And your deputies are instructed to do that?

A. Yes.

Q. How are you paid?

A. Paid by the names. We get fifty cents apiece for every juror summoned. County auditor pays it to us.

Q. You are on a salary?

A. Yes. We don't get the fee. Take it out of one pot and put it back in another pot.

Q. Was Thaddeus Jackson on the grand jury?

A. He was on there in October.

Q. He did serve on the grand jury?

A. Yes, him and another one.

Q. How is your grand jury selected?

[fol. 125] A. Twice a year. Each one serves six months.

The Court: You draw nine at the time?

A. No, sir, the whole eighteen is drawn at once.

Q. You don't have the stagger system?

A. No, sir.

Q. Were you at the October term of Court, 1949 when

they had quite a few special venires for the Carolina Light and Power Company?

A. Yes.

Q. Were any negroes drawn on jury duty at that term of court?

A. Yes.

Q. About what would your estimate be of the number drawn?

A. Four or five. I never paid any attention to them. After I send them out I throw the cards away. The Clerk keeps a list of the jury and we don't bother with it.

Q. How about the term the first part of 1950, January, 1950?

A. I can't remember back.

Q. Do you remember whether a man by the name of Bullock was on the grand jury, E. A. Bullock?

A. Yes, E. A. Bullock, high school teacher in Henderson.

The Court: Was he on the grand jury?

A. Yes, sir.

Q. How about the June term, 1950?

A. I can't recall right off-hand. We have had so many since then.

[fol. 126] Q. Isn't it common knowledge or from your own personal knowledge isn't it true that negroes have consistently served on grand and petit juries from July, 1949 until the present date?

A. Yes, sir. This last grand jury two on there that asked the foreman to excuse them because they had work to do.

Q. I was in your office one day and several people wanted to know if they could be excused.

A. Uncle Jim Henderson came in.

Q. What does your department tell them?

A. Told them no way I could excuse them. They would have to go before the Judge, that that was his business and he would have to excuse them.

Q. You never excused anybody?

A. Unless I knew unable to get there and I put the reason not served. I know this last court I was sitting in my office and Robert Hawkins came in and brought the card and

asked me to excuse him and I knew he was in a critical condition, and has since died, and I told her to forget him.

Q. If you serve a man it is made an official record of the court?

A. Yes, sir.

Q. Do the county commissioners in any way consult you about anyone?

A. Myself or one of the other officers always present when they draw the jury out of the box. We have a little girl or child under ten years old.

[fol. 127] Q. Were you present when the Bertie venire was drawn?

A. I wasn't there but my deputy, Mr. Faulkner, was there.

Q. Was Mr. Faulkner there all the time?

A. Yes, sir. His little girl drew the jury.

Q. You get personal service when you have a special venire?

A. Either call them over the telephone or go to see them direct.

Q. You followed the same procedure in that as with the post cards, you try to summon everybody on the list?

A. Yes, and if we send the cards out I go a day or two before court and check the cards back and those who haven't sent cards back if we can contact them by telephone we call them and if we can't get them we make an effort to see him.

Q. You make an effort to see that every juror is served?

A. Yes, sir, have to do it or the Judge will want to know why.

Q. I direct your attention to the present term of court you are having now. Is J. A. Henderson one of the jurors serving at the January Term, 1951?

A. He didn't serve. He came up and got excused.

Q. He was summoned?

A. Yes, and brought his card in.

Q. How about Philip E. Reed?

A. He served the past term.

Q. Were both of those two negroes?

A. Yes, sir. I know them very well.

Q. How about R. E. Wimberly?

[fol. 128] A. I will be fair with you I don't know R. E. Wimberly.

Q. How about Frank Edwards?

A. I know him.

Q. Did he serve?

A. Yes, sir.

Q. And he is a negro?

A. Yes, sir.

Q. How about William Cousins, Sr.?

A. He was summoned from No. 6.

Q. Did he serve?

A. This last court?

Q. Yes.

A. I think he did. I think he stayed in the courthouse the whole week.

Q. What about Walter Christmas?

A. He served.

Q. He is a negro?

A. Yes, sir.

Q. How about Cyrus Boyd?

A. He served. He lives in town.

Q. He is a negro?

A. Yes, sir.

Q. The last term of court there were a considerable number?

A. Four or five that served.

[fol. 129] Q. Two could have been jurors but they asked to be excused?

A. Yes, sir. My information from the foreman was he wanted to be excused.

Q. From your personal knowledge would you say this situation is typical of most grand and petit juries from 1949 to date?

A. Yes, sir.

Q. Do you have any personal knowledge about the dots on the jury list? Did you put any on there or observe anybody putting them on there?

A. No, sir, never heard of the dots until down in Bertie County.

Redirect examination.

By Mr. Taylor:

Q. You don't have anything to do with the jury box?

A. No.

Q. Don't know whether it is constitutional or not?

A. No.

Q. All you say is you undertook to serve those people?

A. The list I get is the one I try my best to serve.

Q. You didn't add any names or strike any off?

A. Not unless I know they are dead. I have had names I knew the party was dead and marked opposite it "Dead".

Q. Can you estimate how many persons have been summoned for jury duty since July, 1949?

A. No.

Q. Would you say as many as four hundred?

[fol. 130] A. Something like that.

Q. To the best of your recollection how many of that four hundred have been negroes?

A. I don't know. I don't know whether it would be four hundred.

Q. You say you recall some negroes having been called. How many altogether since July, 1949?

A. I don't know.

Q. You say four in January this year?

A. We have had five or six courts.

Q. Four in January this year?

A. Five in January this year.

Q. How many in October?

A. Three or four. I can't recall.

Q. Have as many as ten altogether been called since the fall term, 1949?

A. I imagine so. Might be more or might be less.

No further questions.

STIPULATIONS

Mr. Taylor: We wish to show the number of taxpayers. In arriving at the figures we excluded non-residents, estates, partnerships, duplications and also back listing. It is stipulated that the following is a list of individual taxpayers in the county:

Whites, 5097 on the tax books for 1948;
3136 negroes on the tax books for 1948.
Which is 38 percent negro.

[fol. 131] The Court: How many did you eliminate?

Mr. Brodgen: About 1150.

Mr. Taylor: I will read the census figures on population in Vance County:

1940 Census. Table 21 of the Census, page 45 shows total population in Vance County 29961. Of that 15996 whites, 13958 negro. Percent negro 45.6 percent.

And from Table 22, page 64, entitled "Age, Race and Sex by Counties", for Vance County persons 21 years and over 15811. Of that number negro male 21 years and over 3322, negro female 3383. Percent negro male and female as of total, 42.4 percent.

Also from Table 22, page 64, persons in certain age category: 50 to 54 years, total 1144. Of that white male 312, white female 366; negro male 232, negro female 227. In the age category: 55 to 59 years, total 882. Male white 227, female 292; male negro 174, female negro 131. In the age category, 60 to 64 years, total 726; male white 233, female white 236; male negro 123, female negro 128. 65 to 69 years, total 570; male white 157, female white 174; male negro 111, female negro 124. In the category 70 to 74 years of age, total 360. Of that male white 89, female white 107; male negro 95, female negro 66. Age limits of groups 75 years and over, total 355; male white 79, female white 122; male negro 76, female negro 76.

[fol. 132] On page 77, Table 23, entitled "Persons 14 years old and overall employment status. Class of workers, Major Occupation Group, Industrial Group and Sex by Counties": Total persons from 14 years of age and over, 20747; non-white persons 14 years and over 9154, percent of non-white 14 years and over 44.

Total in labor forces 10893; total non-white 4957; percent non-white 45.5;

Total persons in school not in labor force 2314; total non-white 1042; percent of non-white 45.

From page 21, Table 11, school, age and race for state 1940, ages 5 to 24 years, total native white attending school

587,986, total number of negroes attending school 241,390. Total number of native white ages 5 to 24 years 1,077,892, native number of negroes 456,204.

From Table 13 on page 27, entitled "Persons 25 years old and older, all years of school completed, race and sex for the state," Persons having completed 7 and 8 years of graded school, all classes, 344,891; negroes having finished 7 and 8 years of graded school 61,436; persons having finished one to three years of high school, total 226,448, negroes having completed one to three years of high school 27,251; persons having finished four years of high school, total 152,816; negroes having finished four years of high school, 10,501; persons having finished one to three years [fol. 133] of college, total 88,864; negroes having finished one to three years of college 6,602; persons having finished four years or more of college, total 67,036; negroes having finished four years or more of college 6,366.

It is stipulated that in the jury box are 2126 names and that there are 145 negroes in that group.

The Petitioner rests with the exception of one witness who is not here.

The Court: If he doesn't appear I will accept the affidavit and that of any other witness you may desire to offer, and I will accept the affidavit of any witness for the respondent.

The respondent renews objection to all the evidence and moves that it be stricken. Objection overruled. Motion denied.

The Court: It is generally understood that all testimony is over objection. The objection is overruled.

Respondent renews the motion to dismiss. The motion is denied. Respondent excepts.

L. B. FAULKNER, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Broughton:

Q. State your name?

A. L. B. Faulkner, deputy sheriff of Vance County.

Q. How long have you been deputy sheriff of Vance County?

[fol. 134] A. Eight years.

Q. You have been assisting the sheriff in summoning jurors?

A. Yes, sir.

Q. In what manner did you go about summoning jurors?

A. Regular jury we send a jury card.

Q. Do you happen to have one of those with you?

A. This is it. A double card. We fill it out and send it to each person. When they receive it they tear it half in two, sign it and send the half back addressed to the Sheriff.

Q. About what percentage of the cards do you get back?

A. Over ninety-nine percent.

Q. If someone doesn't send a card back what do you do?

A. Two or three days before court starts we check the list and see who has returned the card and who has not and then try to contact the ones who haven't.

Q. Either by telephone or personal service?

A. Yes, sir.

Q. Have you received any instructions that negroes shall not be served?

A. No, sir. We send cards to every name handed to us.

Q. Have you yourself discriminated against negroes for serving?

A. No, sir.

Q. To your personal knowledge has any discrimination been practiced?

A. No discrimination.

[fol. 135] Q. Do you have any personal knowledge of any dots being on the jury scroll?

A. I didn't until Bertie County.

Q. You don't know how they got on there?

A. No, sir.

Q. The Clerk gave you a list of the ones to be served for jury duty. You know whether there were any dots then?

A. No, sir.

Q. You know that any are negroes?

A. Only way I find out I go to the tax book. In the tax book each name has a number opposite it which denotes the township and then I look in the tax book and find the address.

Q. You send them out regardless of white or negro?

A. Don't make any difference.

Q. Do you turn in the list of those who were not summoned?

A. Yes, sir.

Q. To whom does that go?

A. Most of the time we have two lists. The Sheriff keeps one and the other goes into the auditor's office.

Q. When a person is not summoned what sort of record is made on the clerk of the superior court record?

A. Not served.

Q. How is that indicated?

A. When court convenes the court calls for the list. The sheriff is there with his list and if the sheriff has not called them we say in open court "Not served".

[fol. 136]. Q. Do you make a notation on your list?

A. "Not served".

Q. You put that opposite each name?

A. If he is served I mark a cross mark or an "X", and the ones that haven't been served I put on "Not served".

Q. Have you been present at most terms of court?

A. All except one in the eight years I have been there.

Q. Have you noticed any negroes on the petit jury since 1949?

A. They have been drawn from every jury since then.

Q. Notice any members of the negro race were on the grand juries?

A. Two or three. E. A. Bullock and Thad Jackson served on one and it seems to me William Crews served on one.

Q. Approximately how many negroes on each petit jury?

A. From one to five.

Q. What has been the average number for each term of court?

A. I would say three or four.

Q. How many are on your present or January term of court, petit jury, how many negroes on that?

A. I think five or six names drawn. One was Hawkins who was sick and one more came back "dead".

Q. I direct your attention to the special venire drawn for the trial in Bertie County. Would you tell us exactly what happened at the time that special venire was drawn and who was present? Were you there?

[fol. 137] A. Yes, sir.

Q. Would you tell exactly what happened?

A. My little girl drew the names out of the box.

Q. How old is your little girl?

A. At that time five years old, now six years.

Q. How did your little girl happen to be called?

A. We got a call from Bertie County that they were coming up to draw a special venire. We knew we needed a little girl so I went and got my little girl and brought her in.

Q. Was she the one most easily available?

A. Yes, sir.

Q. Who was present when the names were drawn?

A. Two ladies in the register of deeds' office, the defendant Speller, deputy sheriff with him, Lawyer Taylor, Solicitor Tyler, myself and little girl, and I believe the clerk of the court.

Q. Was the box arranged so every one could see the names being drawn?

A. Sitting on the end of the desk kinder like this. Speller and the deputy sheriff on this side and I was here and the little girl there, and Taylor was over here.

Q. Could Mr. Taylor have seen the names as they were drawn out?

A. I don't know whether he could have seen them. Whether he read them or not I don't know.

Q. Did you call them out?

A. I called them out.

[fol. 138] Q. How did the little girl draw the names?

A. One at the time.

Q. Where did she draw them from?

A. No. 1 box.

Q. Did you notice any of the scrolls were rejected or any objected to?

A. No, sir. I remember one name was called out, Mr. Z. A. Zollicoffer, and another fellow Walker. Mr. Zollicoffer said something about this man being dead. We wanted to know.

Q. What happened to his name?

A. They kept it on the list.

Q. Did you notice anything on the scrolls that would tell you whether a person were negro or white?

A. I didn't pay any attention. The only thing when they handed it to me I read it and dropped it in the other end of the box.

Q. Unless you knew them personally you wouldn't know whether they were white or negro?

A. No, sir.

Q. Who made the list?

A. Miss Brogden.

Q. She is deputy register of deeds?

A. Yes, sir.

Q. How many did you draw?

A. One hundred.

[fol. 139] Q. The prisoner and his counsel were there during all the procedure and in position that they could see what was happening and hear what was said?

A. Yes, sir.

Q. Out of those hundred names drawn how many approximately reported to Bertie County for service?

A. I don't know.

Q. Would sixty-eight to seventy be a good figure?

The Court: It is in the record.

Cross-examination of L. B. Faulkner.

By Mr. Gates:

Q. You say you have been deputy sheriff eight years?

A. That's right.

Q. Prospective jurors, you testified that you saw none on the panel. That was prior to July, 1949. I mean after that:

A. I don't understand.

Q. Those colored jurors that you summoned, that was after July, 1949?

A. Yes.

Q. During the eight years you served as deputy sheriff you haven't seen any colored jurors serving prior to 1949?

A. Not that I remember.

Q. Then you can't recall specifically any that you summoned?

A. No.

[fol. 140] The Court: You are talking about before July, 1949?

Mr. Gates: Yes, sir.

Q. Isn't it common knowledge in Vance County that colored people don't serve on the jury?

A. They didn't up to this time.

Q. After July, 1949 that is when—

A. Since that time they have been drawn for superior court jury and also six man jury for recorder's court.

That is all.

Re-direct examination:

Q. This was the first jury drawn out of this particular box, the one in Bertie County?

A. Yes, sir.

Q. All those jurors that you testified served subsequent to July, 1949, they were drawn out of the same box as the Bertie County jury?

A. Yes, sir, out of the same box.

Re-cross examination:

Q. You don't know how the jury box was constituted, where the names are drawn?

A. No.

Q. And how the names got in there and how it is made up?

A. Only thing, if I am on duty most of the time I am there but so far as preparing the jury box I don't know anything about it.

That is all.

[fol. 141] CHAS. W. WILLIAMSON, having been first duly sworn, testified as follows:

Direct-examination.

By Mr. Taylor:

Q. State your name and address?

A. Charles W. Williamson, Henderson, North Carolina.

Q. Mr. Williamson, what is your business?

A. I am a lawyer.

Q. Practicing law in Henderson in Vance County?

A. Yes, sir.

Q. How long have you been practicing law?

A. Since October, 1933.

Q. During that time have you had occasion to visit the various terms of court of Vance Superior Court?

A. Every term. I have some business in most all of them.

Q. Prior to July, 1949 you ever known a negro to be called for jury service in Vance County?

A. I have not.

Q. Is it not more or less common knowledge that prior to July, 1949 negroes had not and did not serve on juries?

A. It is.

Cross-examination of Chas. W. Williamson.

By Mr. Brogden:

Q. You say you have attended all courts in Vance County since July, 1949?

A. Yes, sir.

[fol. 142] Q. You have noticed whether negroes are on those juries?

A. The only one I know of that actually served on the jury was in superior court January, 1950.

Q. Who was that?

A. E. A. Bullock.

Q. He was on the grand jury?

A. Yes, sir.

Q. I direct your attention to the term January, 1951. How many persons of the negro race were serving on the grand and petit jury?

A. I suppose three or four. I knew one by name. I know one was on the grand jury and I do recall one or two being called and examined for petit jury but as to the number I couldn't say.

Q. But a greater number actually served. Some requested to be excused and some the Judge refused?

A. Some were refused.

Q. A great number were summoned to serve?

A. I know they were there but what took place I don't know. At all times I wasn't in the room. Whether they asked to be excused or not I couldn't say.

Q. Did you sit in on the Carolina Power and Light Company case in 1949?

A. Some of it.

Q. How many negroes were drawn for jury duty in that case?

[fol. 143] A. I recall two from Northampton County.

Q. I am asking you about the special venire October 12, 1949?

A. The selection of the jury took quite a while. There were some negroes drawn. What I was trying to say, when they tried the Carolina Power and Light Company case they had a jury from Northampton County.

Q. They exhausted several special venires from Vance County?

A. Yes, sir.

Q. I direct your attention to August 29, special venire Bertie County. Were you present when that was drawn in this particular case?

A. No, sir, I was not. I have just been asked to come down as a witness.

Q. Isn't it true that negroes have consistently served in jury panel at every term of court in Vance County since July, 1949?

A. We didn't have a term there in July. Our term is in June and October of last year. I can't recall October, 1949.

Q. You know William Crews?

A. No.

Q. Maggie Cunningham?

A. No, sir.

Q. You know Sallie Eaton?

A. There are two Sallie Eatons. You mean Sallie Tom? I recall Sallie.

[fol. 144] The Court: What do you recall about the terms in 1950 and 1951?

A. I recall occasions when I am trying cases. E. A. Bullock is a friend of mine. He was a juror in January, 1950. At the last term of court I had two or three cases there.

Q. Last week?

A. Yes, sir.

Q. Negroes were on the jury?

A. Yes, sir.

Q. How many?

A. I don't recall a negro serving on the petit jury. I don't recall because my cases didn't go to the jury.

Q. You are making a distinction between the ones on the panel and the ones actually called in and sat on the trial of a case?

A. No, sir, the courtroom was full and I couldn't tell who was summoned unless he was placed in the box or rejected.

Q. You can't testify of your own knowledge that there has not been an average of three or four or five summoned for jury duty since July, 1949?

A. Let me make myself clear. I didn't know they were coming up. I have known them to be called but the exact number I couldn't say and the only way I could tell whether one is called is the fact his name is called and he is excused or not.

Q. Have you observed that they have been called at each term of court subsequent to July, 1949?

A. I am not sure on that.

[fol. 145] Q. You couldn't say that they have not served at each term of court after July, 1949?

A. No, sir, I couldn't say because frankly I—

The Court: I believe the witness has done the best he could.

OFFERS IN EVIDENCE AND STIPULATIONS

Respondent offers in evidence the break-down of the totals of names drawn from the jury boxes as follows:

From Box No. 2 a total of 779, of which 41 were negroes;

From Box No. 1 a total of 1347, of which 104 were negroes.

It is stipulated that it will not be necessary for the court reporter to include the entire list of names but that the names of negroes drawn from Box No. 2, 41 in number, be incorporated in the record, and that that list be made alphabetically. (Note; See page 24)

Respondent offers in evidence the record filed in the Supreme Court of North Carolina at the Spring Term, 1950, and same is marked "R-1". Respondent is permitted to withdraw the exhibit.

It is stipulated that whites and colored eliminated from the total of 8233. In addition there were some other types of names in the books; assets, partnerships, corporations, back listings, the grand total before all these eliminated, 5825 white and 3555 negroes, making a grand total of 9380 before certain categories were excluded. Approximately [fol. 146] that many names were listed in the tax book. Of the exclusions 237 whites were excluded because the listing was for an estate, of the negroes 220 were excluded because they were estate listings, making a total of 457 tax listings or names excluded because they stood for the estate of deceased persons.

The next category of exclusion is non-residents. Total of 271 white listings excluded for this reason, a total of 136 negro tax listings for this reason, making a total of 407 excluded because they were non-residents and not residents of Vance County.

The next category for exclusion, tax listing partnerships, which includes also corporations and in some instances individual proprietorships, of the white listings 67 were excluded, of the colored 11, making a total of 78.

The next category excluded was back listings, for white a total of 52, negro a total of 45, making a total of 97.

The last and final category is duplications. Where a person owned several pieces of land and they were listed separately white 101, negro 8, making a total of 109.

Counsel for petitioner stipulates to the correctness of these figures.

Mr. Rhodes: I understand there were two negroes who appeared in the trial jury box, one of those excused by the

Judge by consent of both sides because she was a moron, that the other negro was excused by the defendant. It seems somewhat of an attack on the administration of justice [fol. 147] of the State of North Carolina. I think this has some bearing on the part of the court officials that that feeling was not there and that the only negro competent to serve and who was in the jury box was passed by the Solicitor but turned down by the defendant.

Mr. Taylor: That is the first time I have heard of it. We have never had opportunity to question a potential negro juror.

Mr. Rhodes: Do I understand there were two negroes in the trial jury box?

Mr. Taylor: Not one has survived the State's examination in three years.

Mr. Rhodes: Were there not two negroes that appeared in the trial jury box?

Mr. Taylor: Four appeared and were questioned by the Solicitor.

Mr. Rhodes: Every person who came there didn't have opportunity to appear in the trial jury box.

Close of the hearing.

[fol. 148] Reporter's certificate (omitted in printing).

[fol. 149] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed July 12,
1951

Upon the evidence presented and the stipulations of counsel, the Court finds these facts:

1. Petitioner, an inmate of the Central Prison of the State of North Carolina, instituted this proceeding against respondent, Warden of the aforesaid prison under Chapter 153 of Title 28 of the U. S. Code, by affidavit and motion to proceed *in forma pauperis* for a writ of habeas corpus.

2. Petitioner contends that he is unlawfully detained in prison and under sentence of death at the aforesaid prison.

3. Petitioner was convicted of the capital crime of rape at the August, 1949 Term of the Superior Court of Bertie County, North Carolina, on September 5, 1949.

4. The first indictment upon which petitioner was tried was found at the August, 1947 Term of Bertie County Superior Court by a grand jury; he was tried and convicted under this indictment at the November, 1947 Term; upon appeal to the Supreme Court of North Carolina (*State v. Speller*, 229 N. C., p. 67), it was held that the indictment was invalid because of arbitrary exclusion of negroes from the grand jury on account of race; a second indictment was returned at the August, 1948 Term of Bertie County Superior Court by a grand jury composed of members of both the white and negro races; the validity of this second [fol. 150] indictment has not been challenged; at the November, 1948 Term of the same Court petitioner was convicted by a jury drawn from Warren County, in accordance with North Carolina law, and sentenced to death; upon appeal from this judgment, the Supreme Court of North Carolina vacated the judgment and granted a new trial for the reason that the trial Judge refused to give counsel for the defense time to investigate the facts and to procure evidence from Warren County in support of the challenge to the array (*State v. Speller*, 230 N. C., p. 345); the third trial, the one now questioned, was held at the August, 1949 Term of the same Court, and again the petitioner was convicted and sentenced to death; when the case was called for trial, the presiding Judge, upon petitioner's motion, ordered that "a special venire from Vance County be summoned by the Sheriff of Vance County to attend at the Court House in Windsor, N. C. (Bertie County) . . . to serve as jurors in said action"; and ordered "the Clerk of the Board of Vance County Commissioners to cause one hundred scrolls to be drawn from box No. 1 by a child under ten years of age" to constitute the special venire; in pursuance to such order the scrolls were drawn by a child under ten years of age in the office of the Clerk of the Superior Court of Vance County, in the presence of petitioner, his counsel, Mr. Herman L.

Taylor, the Solicitor of the District, and the Clerk of the Board of Commissioners; of the one hundred drawn, sixty-three were served and appeared; of the one hundred drawn, seven were members of the negro race, and of the sixty-three, four were negroes; the others were members of the white race; from those attending, the jury which convicted the petitioner was drawn according to the North Carolina Statutes and the practice in its Courts; one of the negroes was examined on his voir dire, but the jury as finally constituted was composed exclusively of members of the white race.

[fol. 151] 5. After entry of plea of not guilty to the indictment, the petitioner challenged the entire array of special veniremen drawn from Vance County on the ground that the officials of Vance County whose duty it was to prepare the jury list purposely, arbitrarily and systematically, discriminated against members of the negro race by excluding negroes from the jury box solely on account of race.

6. Upon presentation of such challenge the trial Judge heard such evidence as petitioner desired to offer, and thereupon overruled the motion and disallowed the challenge. (The findings of fact on this evidence are set forth at page 57 of the transcript on appeal to the Supreme Court of North Carolina). The jury returned a verdict of guilty without recommendation of mercy, and again petitioner was sentenced to death.

7. From this judgment the petitioner again appealed to the Supreme Court of North Carolina, and on this appeal the judgment was affirmed, the Court, through the Chief Justice, stating: "On the present hearing, all charges of discrimination, jury defect and alleged irregularities, which again constitute the defendant's principal exceptions, have been carefully investigated with ample opportunity afforded the defendant to be heard upon his challenges. No such exclusion appears here. The challenge of the array was properly overruled on the findings made by the trial Court, which are amply supported by the evidence and are without sufficient challenge under the rules . . ."

8. Upon the affirmation of the Supreme Court of North Carolina of petitioner's third conviction and sentence,

application was filed with the Supreme Court of the United States for a writ of certiorari to review the decision of the North Carolina Court, and on the 9th day of October, 1950, the Supreme Court of the United States denied the application.

9. Upon denial of the petition for writ of certiorari by [fol. 152] the Supreme Court of the United States, the petitioner filed this petition for writ of habeas corpus, and a writ was issued and an order entered staying the execution of the judgment of the State Court pending a hearing.

10. The respondent, in compliance with the writ, brought the petitioner before the Court in Tarboro, N. C. in the Eastern District of North Carolina, on January 3, 1951, to which date the return by order of the Court had been continued.

11. At the outset of the hearing upon the return, the respondent filed a motion to discharge the writ without the taking of evidence (this motion is filed with the court papers). The Court reserved its decision upon the motion and proceeded to the taking of evidence from both the petitioner and respondent. The respondent entered a general objection to every question propounded by petitioner, his witnesses, and upon the overruling of each objection the respondent moved to strike out the answer and in each instance the motion was denied. In every case where the respondent examined the witness in his behalf, the questions were propounded after respondent had reiterated his objections to all the evidence and reserved his exceptions.

12. At the conclusion of all the evidence the respondent renewed his motion to dismiss, and this motion was denied and overruled.

13. The petitioner is a member of the negro race.

14. The facts found by the trial Judge in the State Court, in respect to the composition of the trial jury, are supported by the evidence, including that taken in the State Court, and these findings are adopted as the findings of fact bearing on this question; and the Court specifically finds it was not shown that there was purposeful, systematic and arbitrary exclusion of negroes solely on account of race from the jury boxes of Vance County, from which the

[fol. 153] special venire was drawn, and from which the trial jury was selected.

Conclusions of Law

Upon these facts the Court concludes:

1. The Court was in error in overruling the respondent's motion to dismiss as a matter of law before the introduction of evidence, and that such motion be and the same is now granted.

2. That the petitioner, who was being held as a prisoner by respondent, awaiting execution under the judgment of the North Carolina Court, was not and is not "in custody in violation of the Constitution or laws or treaties of the United States" within the contemplation of Sec. 2241 (c) (3) of Title 28, United States Code Annotated, and is not entitled to his release as prayed.

3. That the writ should be vacated, the petition dismissed; and the petitioner remanded to the respondent and the North Carolina authorities for further proceedings under the judgment of the State Court and in accordance with its provisions.

4. That an order to such effect be entered.

July 12, 1951.

Don Gilliam, United States District Judge.

[fol. 154] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA

MEMORANDUM OPINION—Filed July 12, 1951

The petitioner, a negro, has been tried three times before a jury in the Superior Court of Bertie County, North Carolina, and convicted on each trial. The bill of indictment upon which he was tried was returned at the August, 1948 Term of the Superior Court of Bertie County by a Grand Jury consisting of members of both the white and negro races, and charged the petitioner with the crime of rape. The petitioner duly appealed to the Supreme Court of North Carolina, from each of the judgments which sentenced him

to death; the first appeal is reported as *State v. Raleigh Speller*, 229 N. C., p. 67; 47 S. E. 2nd, p. 537; and in this case the Supreme Court of North Carolina held that the motion of the defendant to quash the indictment should have been allowed upon the showing that in Bertie County the names of negroes were printed in red and the names of white persons were printed in black, and that in drawing the names from the box the names of negroes were without exception rejected, as such procedure constituted "systematic and arbitrary exclusion of negroes from the Grand Jury" on account of race. The Supreme Court ordered that the petitioner be held for the finding of an indictment by a proper Grand Jury.

The second appeal is reported as *State v. Raleigh Speller*, 230 N. C., p. 345; 53 S. E. 2nd, p. 294. On this appeal the Supreme Court granted the petitioner a new trial, stating in its opinion: "Thus, the record disclosed not only that the [fol. 155] prisoner and his attorneys were denied a reasonable opportunity in the light of prevailing conditions to investigate, prepare and present his defense on the challenge to the array, but also that such denial of such opportunity prejudiced the prisoner's rights."

The third appeal is reported as *State v. Raleigh Speller*, 231 N. C., p. 549. On this appeal the judgment of death imposed in the Superior Court was affirmed and Chief Justice Stacy, writing for the Court, stated: "For the third time the defendant appeals from a conviction of rape, without any recommendation from the jury, and sentence of death as the law commands in such cases."

"On the present hearing, all charges of discrimination, jury defect and alleged irregularities, which again constitute the defendant's principal exceptions, have been carefully investigated with ample opportunity afforded the defendant to be heard upon his challenges . . .

"The case was tried at the August Term, 1949, Bertie Superior Court, before a jury selected from a special venire drawn from Vance County at the instance of the defendant. Defendant's counsel suggested that the venire from which the jury should be selected be summoned from the most remote county in the Third Judicial District, the same being Vance County.

"It was made to appear that on the first Monday in July, 1949, the Commissioners of Vance County had purged the jury lists of their County and, in full compliance with the law, had placed the names of persons of both the white and colored races in the jury box, without discrimination of any kind: On the special venire drawn to try the instant case, there appeared the names of seven negroes, the race to which the defendant belongs. It is not the right of any party to be tried by a jury of his own race or to have a representative of any particular race on the jury. It is his right, however, to be tried by a competent jury from which members of his race have not been unlawfully excluded. No such exclusion appears here. The challenge of the array was properly overruled on the findings made by the trial Court, which are amply supported by the evidence and are without sufficient challenge under the rules.

"The exceptions to the charge are feckless and are patently without merit. They are not sustained. The Court was careful to call to the attention of the jury Chapter 299, Session Laws of 1949, providing that 'if the jury shall so recommend at the time of rendering its verdict in open court, the punishment for rape shall be imprisonment for life in the State's Prison, and the Court shall so instruct the jury'. Notwithstanding the instruction, the jury did not see fit to make such a recommendation."

Upon the affirmation by the Supreme Court of North Carolina of petitioner's third conviction and sentence, application was filed with the Supreme Court of the United States for a writ of certiorari to review the decision of the Supreme Court of North Carolina, and on the 9th day of October, 1950, the Supreme Court of the United States denied the application. The application for such writ was based upon the same facts, arguments and contentions as to the law which the petitioner now requests this Court to review upon this petition for a writ of habeas corpus.

When this case was called for trial at the August Term, 1949, of the Superior Court of Bertie County, the presiding Judge, in compliance with the petitioner's motion, ordered "that a special venire from Vance County be summoned by the Sheriff of Vance County to attend at the Court House at Windsor, North Carolina, at 10:30 A.M. on the 31st day of

August, 1949, to serve as jurors in said action", and ordered "the Clerk to the Board of County Commissioners of Vance County to cause one hundred scrolls to be drawn from box [fol. 157] No. 1 by a child under ten years of age, and the names so drawn shall constitute the special venire, and the Clerk of the Superior Court of Vance County shall insert their names in a writ of venire and deliver the same to the Sheriff of Vance County, and the persons named in the writ and no others shall be summoned by the Sheriff of Vance County to be and appear at the Court House in Windsor in Bertie County at 10:30 A.M. on the 31st day of August, 1949. That the said venire shall be drawn as aforesaid in the presence of the defendant, Raleigh Speller, and at least one of his attorneys and the Solicitor of this Judicial District, at 4:30 P.M. on the 29th day of August, 1949."

In pursuance to the above order, one hundred scrolls were drawn from jury box No. 1 by a child under ten years of age, in the office of the Clerk of the Superior Court of Vance County, in the presence of the petitioner, his counsel, Mr. Herman L. Taylor, the Solicitor of the Third Judicial District, Mr. Ernest Tyler, and the Clerk to the Board of County Commissioners of Vance County, who, under the law, has custody of the jury boxes. Of the one hundred individuals whose names were drawn from the jury boxes to constitute the special venire, sixty-three were served by the Sheriff of Vance County and attended upon the trial at Windsor, N. C. Of the number attending, four were members of the negro race, the others were members of the white race. From those attending, the jury which heard the case and convicted the petitioner was chosen according to the statutes and the practice of the court.

The petitioner did not challenge the Grand Jury which found the bill of indictment; and no motion to quash was made; but after argument and entry of a plea of not guilty, the petitioner for the first time challenged the entire array [fol. 158] of petit jurors and special venire summoned from Vance County on the ground that the officials of Vance County, whose duty it was to prepare the jury lists, purposefully, arbitrarily and systematically discriminated against members of the negro race by excluding negroes from the jury lists and panels because of their race, thereby violating

petitioner's right to a trial by his peers as guaranteed under the Constitution and laws of the State of North Carolina and the Constitution of the United States.

Upon the petitioner's challenge to the array of petit jurors and his motion that the Court quash and set aside the entire array of special veniremen, the presiding Judge caused to be issued a subpoena duces tecum to the Chairman of the Vance County Board of Commissioners, the Clerk of the Board, the Clerk of the Superior Court, the County Tax Collector, and the Sheriff, all of Vance County, requiring them to bring in court their several records pertaining to the listing, drawing and summoning of jurors in Vance County, together with the jury boxes and records pertaining thereto. The witnesses subpoenaed appeared before the presiding Judge with their records and the jury boxes, and thereupon the petitioner was given opportunity to present evidence in support of his motion that the array of petit jurors and special veniremen summoned from Vance County be quashed and set aside. The petitioner presented several witnesses, as the record will show, who testified as to the manner and method of the drawing of the special venire as appeared in the transcript of evidence and statement of cases on appeal heretofore filed in this cause, and the presiding Judge made full and complete findings of fact as will appear on pages 57 through 63 of the transcript which has been filed as a part of the record of this proceeding; and upon these findings the presiding Judge overruled and dismissed the motion that the array of special veniremen be quashed and set aside. [fol. 159] The Judge concluded that there had been no purposeful, arbitrary and systematic exclusion of negroes from the jury boxes on account of their race, and thereupon the cause was duly tried by a jury of twelve selected from the panel drawn from the jury box of Vance County, which panel, as above noted, contained four members of the negro race who were served and attended, and three other members of the negro race who were not found and served. This jury found the petitioner guilty and he was sentenced to die.

Although the Court felt strongly disposed to deny the petition for writ of habeas corpus solely on the procedural history, it was decided to give the petitioner an opportunity to present such evidence as he might have upon the merits of

his contentions, therefore, the writ was issued and the respondent in compliance brought the petitioner before the court in Tarboro, North Carolina, in the Eastern District of North Carolina on the 3rd day of January, 1951, to which date the return by order of the Court had been continued. At the outset of the hearing, upon the return, the respondent filed a motion to discharge the writ without the taking of evidence. This motion is filed with the case papers. The Court overruled the motion and proceeded to take evidence from both the petitioner and the respondent. The respondent entered a general objection to every question propounded by petitioner to their witnesses, and upon the overruling of each objection the respondent moved to strike out the answer to the question, and in each instance the motion was denied. When the respondent examined witnesses in his own behalf, the questions were propounded after the respondent had reiterated his objection to all the evidence and reserved his exceptions.

From the evidence introduced the Court has found certain facts separately, and these findings are filed simultaneously herewith.

[fol. 160] At the conclusion of all the evidence the respondent renewed his motion to dismiss, and the motion was denied and overruled.

I had no very serious doubt at the time of the soundness of respondent's motion to dismiss, but such doubt as was entertained was resolved in favor of the petitioner, so that a finding now on the factual background of the case may appear in the record.

The Court now concludes that the writ should be vacated and the petition dismissed upon the procedural history and the record in the State Courts, for the reason that habeas corpus proceeding is not available to the petitioner for the purpose of raising the identical question passed upon in those Courts. There are a number of cases which so hold and the cases cited by petitioner's counsel fail to convince me of the correctness of his contention.

The question is discussed by Chief Judge Parker in *Sanderlin v. Smith*, 138 Fed. (2), p. 729, with these comments: (p. 730) "The writ of habeas corpus may not be used in such cases as an appeal or writ of error to review

proceedings in the State Court"; (p. 731) "The judgment of the State Court is ordinarily *res adjudicata*, not only those issues were raised and determined, but also of those which might have been raised"; (p. 731) "Ordinarily, adjudications made by the State Courts in connection with applications made to them will be binding on the federal Courts". Among many other cases examined are *Smith v. United States*, 187 Fed. (2), p. 192; *Andrews v. Swartz*, 156 U. S., p. 272; *Morton v. Henderson*, 123 Fed. (2), p. 48; *Hawk v. Olsen*, 130 Fed. (2), p. 910; *Eury v. Huff*, 141 Fed. (2), p. 554; and *Feeley v. Ragen*, 166 Fed. (2), p. 976.

In the last case the Court said : (p. 981) "We should [fol. 161] not lose sight of the fact that the Federal Courts are being used to invade the sovereign jurisdiction of the States, presumed to be competent to handle their own police affairs, as the Constitution recognized when the police power was left to the States. We are not super-legislatures or glorified parole boards When we condemn a State's exercise of its jurisdiction and hold that the exercise of its power is not in accordance with due process, we are in effect trying the States. It is State action that is on trial, and a decent regard for the coordinate powers of the two governments requires that we give due process to the State. That is the reason that in habeas corpus cases the relator must first show that he has exhausted his State remedies to open the way for the Federal Courts to try the State's exercise of its sovereign power. For after all, the States represent the people more intimately than the Federal government There is no room for crusades or the fulfillment of missions". This, to my mind, is the only proper approach to this delicate question, and any other will mean impairment of respect for both the Courts of the States and the Courts of the United States. The State Courts bow, of course, to the mandates of the Federal Courts, but, no doubt, indulge in respectful resentment of the repeated suggestion that they are incapable of enforcing State laws in accordance with the United States Constitution and in line with principles of justice and fair play.

Conceding, for argument's sake, that the original "jurisdictional test" in cases like this gives way to a new concept

of the scope of matters to be considered in habeas corpus cases under which the test is whether "such a gross violation of constitutional right as to deny to the petitioner the substance of a fair trial", nevertheless, petitioner is not entitled to the relief sought.

[fol. 162] The position that petitioner was denied "the substance of a fair trial" cannot be sustained upon the evidence, including both that taken in the State Court and that taken in this Court.

The findings of fact of the trial Judge, with respect to whether there had been prejudicial discrimination against petitioner in the composition of the jury box from which the trial jury was selected, are set out in the record in the North Carolina Supreme Court, at page 57. And these findings have been adopted as the findings of fact of this Court.

At the hearing before this Court, the Vance County jury boxes-No. 1 and No. 2 were brought before the Court by the Register of Deeds of Vance County, who, under the law of North Carolina, is Clerk to the County Board of Commissioners and as such Clerk holds the custody of the jury boxes for the Board of Commissioners. These jury boxes were opened and the scrolls therein examined, with the purpose of determining how many names of negroes and whites, respectively, had been placed therein when the purge of the jury boxes in July, 1949 was accomplished. As a result of this procedure an agreement between counsel was reached that there were in both boxes, combined at the time of the hearing and, of course, at the time of the drawing of the venire in this case, the names of 145 negroes and the names of 2,081 whites. Each of the persons now living who had any part in the purge of the jury boxes in 1949, to-wit, three of the County Commissioners and the Clerk of the Board, testified that the names which were placed in the jury boxes were taken entirely from the Tax Books of Vance County, and that no person's name was rejected on account of his or her race. All the direct evidence is that there was no discrimination against the negro race as such, and the ratio of negroes to whites in the jury boxes, in the light of the well known fact that the proportion of whites qualified for jury service is much

higher than that of negroes who are so qualified, is not [fol. 163] sufficient, in the Court's opinion, to support the burden resting upon the petitioner to show actual discrimination. The Superior Court Judge so held, and his finding has been upheld by the North Carolina Supreme Court which, upon the first of the three appeals taken by the petitioner, demonstrated its readiness to strike down the findings of a trial Judge in situations of this kind, when required by the ends of justice. On this first appeal (229 N.C., p. 67), it appeared that the trial Judge had found there was no "intentional or purposeful discrimination against the colored race in the selection of jurors." But the Supreme Court of North Carolina refused to accept this finding and said: "A careful persual of the record leaves us with the impression that the findings and rulings of the trial Court on the defendant's motion to quash the indictment are without support in the factual evidence". A new trial was ordered.

No real problem is presented by the evidence which shows that dots were used to identify the names of negroes appearing on the jury scrolls. It is suggested that the circumstance proved discrimination, but there is nothing to the argument. It might be reasonably argued that this device was used to enable those drawing juries to distinguish between names of whites and names of negroes when desired, but in this case the drawing was in the presence of one of petitioner's counsel and every name drawn by the child under ten years of age was entered on the panel or venire, regardless of dots and irrespective of race. As a matter of fact, seven negroes were drawn and served, and four negroes attended the trial as members of the venire; one negro was actually examined on the voir dire, though no negro was actually accepted. It is certainly not enough for petitioner to show a purpose generally on the part of Vance County officials to limit the number of negroes drawn for jury service; he must show by the evidence, [fol. 164] as I read the cases, that discrimination actually occurred in his case in the matter of the composition of the jury which passed upon his rights.

I agree with the Superior Court Judge who tried the petitioner and sentenced him to die, and the Supreme Court

of North Carolina, which, having vacated two former death sentences in the interest of justice, has upheld the trial now questioned and the death sentence imposed as a result. The petitioner failed to prove his allegation of discrimination in the composition of the jury list.

It is decided, therefore, first, that the writ should be vacated and the petition dismissed solely in the light of the procedural history and the record in the State Courts; and, secondly, that in any event, even if petitioner is now entitled to raise the same question passed on in the State Courts, he has failed to substantiate the charge that he did not have a trial according to due process, and is not entitled to his release as prayed.

An order has been entered vacating the writ, dismissing the petition, and remanding the petitioner to the custody of the respondent and the North Carolina authorities for further proceedings under the judgment entered against him nearly two years ago.

This July 12, 1951.

Don Gilliam, United States District Judge.

Addenda: Two other cases decided by our Court of Circuit Appeals seem also to support the conclusion reached above. These are: Stonebreaker v. Smith, 163 Fed. 2nd, 498; and Jerry Adkins v. W. Frank Smith, decided April 10, 1951.

Don Gilliam, United States District Judge.

[fol. 165] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

[Title omitted]

ORDER—Filed July 14, 1951

Upon the facts found by the Court and filed separately, and in accordance with the conclusions of law arising thereon, It Is Ordered and Decreed:

1. That the writ of habeas corpus heretofore issued be vacated, and the petition dismissed.

2. That the petitioner be and he is hereby remanded to the respondent and the North Carolina authorities for

further proceedings under the judgment of the Superior Court of North Carolina, and in accordance with its provisions.

3. That the stay of execution under the State Court judgment heretofore entered be and it is hereby vacated.

4. That a certified copy of this Order under the seal of the Court be served by the United States Marshal, or one of his deputies, upon the respondent as his authority for proceeding under the judgment of the State Court.

This 13th day of July, 1961.

Don Gilliam, United States District Judge.

United States Court of Appeals
For the Fourth Circuit

No. 6331

RALEIGH SPELLER, Appellant,
against

JOSEPH P. CRAWFORD, Warden, Central Prison
of the State of North Carolina, Raleigh, N. C.,
Respondent-Appellee

Appendix To Respondent-Appellee's Brief

STATE'S EXHIBIT II

SCHEDULE OF JURY SERVICE
BERTIE COUNTY SUPERIOR COURT
AUGUST 29, TERM, 1949

- LEGEND:**
- S.** Served by Sheriff and member of jury panel.
 - NS** Not to be found by sheriff (not served).
 - EX** Served by sheriff and member of jury panel but excused by Court from jury service.
 - GJ** Member of Grand Jury.
 - PJ** Member of Petit Jury.

The petitioner was tried in a court of general jurisdiction in Bertie County, North Carolina, and he raised the constitutional issue which he is now asking this Court to retry. This issue was decided adversely to petitioner in the State Courts, and being dissatisfied with these decisions, the petitioner is simply asking the Federal Court to use the writ of *habeas corpus* as a substitute for an appeal and thereby retry the issue again. In other words, the Federal Court, according to petitioner's concepts, would be a super court of appeals. We think that we have clearly shown that this is not the proper use of *habeas corpus*. The petitioner had the precise question before this court reviewed by the Supreme Court of North Carolina. The petitioner availed himself fully thereof, and, as we see it, he can not complain and assert that he is entitled to retry the case in the Federal Court, especially since the Supreme Court of the United States, having before it a record of all the proceedings and knowing the seriousness of the situation, saw fit to deny petitioner's application for a writ of *certiorari* in that Court.

Respectfully submitted,

HARRY McMULLAN,
Attorney General
of North Carolina.

RALPH MOODY;
Assistant Attorney General
of North Carolina.

R. BROOKES PETERS, JR.,
General Counsel of State
Highway & Public Works
Commission.

E. O. BROGDEN, JR.,
Attorney for State High-
way and Public Works
Commission.

Attorneys for Appellee.

Jury or Venire	Name	Vance County Township	Return of Sheriff	Reason	Jury
SPECIAL VENIRE FROM VANCE COUNTY Aug. 29, 1949	Brown, Mollie	7	NS	Dead	
	Eaton, Lucy A.	1	S		PJ
	Henderson, James	5	S		PJ
	Lewis, Clara	6	NS	Dead	
	Plummer, Chesley	5	S		PJ
	Walker, T. J.	5	NS	Dead	
	Wilson, Josephine	7	S		PJ

STATE OF NORTH CAROLINA

COUNTY OF BERTIE

I, George C. Spoolman, Clerk of Superior Court of Bertie County, State of North Carolina, which Court is a Court of Record, having an official seal, which is hereto attached and affixed, do hereby certify the foregoing and attached Schedule of Jury Service (One (1) Sheet) to be a true copy of excerpts from Minute Docket No. 13 of Bertie County, said excerpts containing a list of Negro Jurors summoned from Vance County on August 29, 1949, for a special venire from which the jury which tried Raleigh Speller was selected, as the same is taken from and compared with the original now on file in this office. This list includes those not to be found within the county and those who were deceased for the term of court thereon shown.

In witness whereof, I have hereunto set my hand and affixed the seal of the Superior Court of Bertie County at my office in Windsor, North Carolina, this the 17 day of April, 1951, in the year of our Lord, 1951.

Geo. C. Spoolman

Clerk of Superior Court

(Seal)

(DULY EXEMPLIFIED. R. 54-56)

STATE'S EXHIBIT III

JURY SCROLL, VANCE COUNTY,
JULY 1, 1949 - JANUARY 8, 1951

SCHEDULE OF JURY SERVICE

LEGEND: S Served by Sheriff and member of jury panel.

NS Not to be found by sheriff (not served).

EX Served by sheriff and member of jury panel, but excused by Court from jury service.

GJ Member of Grand Jury.

PJ Member of Petit Jury.

Jury or Venire.	Name	Township	Return of Sheriff	Reason	Jury
SPECIAL VENIRE BERTIE COUNTY Aug. 29, 1949	Brown, Mollie	7			
	Eaton, Lucy A.	1			
	Henderson, James	5			
	Lewis, Clara	6			
	Plummer, Chesley	5			
	Walker, T. J.	5			
	Willson, Josephine	7			

*Our records do not show if served or excused.

SPECIAL VENIRE Oct. 4, 1949	Cunningham, Maggie	2	S		PJ
	Evans, Johnny	5	NS		
	Poole, Marlon	1	S		EX
SPECIAL VENIRE Oct. 11, 1949	Henderson, Edward	6	NS		
SPECIAL VENIRE Oct. 12, 1949	Adams, J. B.	1	S		PJ
	Eaton, Sally A.	1	NS		
	Hunt, Johnny Bell	2	S		EX
	Williams, Robert J.	5	S		PJ
SPECIAL VENIRE CIVIL TERM Dec. 12, 1949	Evans, Lewis	1			
	Revis, Edward L.	1			

*Jury not used.

REGULAR TERM Jan. 9, 1950	Bullock, E. A.	1	S		GJ
	Wyche, Oliver	1	NS		
REGULAR TERM March, 1950					
1st week	Peoples, W. H.		S		PJ
2nd week	Hanks, Beulah		NS		

<i>Jury or Venire</i>	<i>Name</i>	<i>Township</i>	<i>Return of Sheriff</i>	<i>Reason</i>	<i>Jury</i>
CRIMINAL TERM	Brooks, W. T.	3	S		PJ
June 19, 1950	Vincent, Moses	7	S		PJ
CIVIL TERM	Crudup, John	1	S		PJ
June 26, 1950	Paschall, William	5	S		PJ
*Jury not used.					
CRIMINAL TERM	Crews, William	6	S		GJ
Oct. 2, 1950	Jackson, Thaddeus	1	S		GJ
Oct. 3, 1950	Jones, Pompey J.	1	S		PJ
CIVIL TERM	David, Walter	7	NS		
Oct. 9, 1950					
CRIMINAL TERM	Boyd, Cyrus	3	S		GJ
Jan. 8, 1951	Christmas, Walter	3	S		PJ
	Cousins, William	6	NS		
	Edwards, Frank	3	S		PJ
	Hawkins, Robert	7	NS		
	Henderson, J. A.	4	S		PJ
	Reed, Phil E.	6	S		PJ
	Wimberley, R. E.	1	NS	non-resident	
NO RECORD OF:	Bullock, Moses M.	5			
	Massenburg, Early	7			
	Parham, S. G.	1			
	*Fogg, William	7			

*In the Superior Court a case against William Fogg was pending charging him with public drunkenness and indecent exposure. In March, 1948 judgment absolute on bond was entered and capias was issued. At June Term, 1949 the State took a Nol Pros with Leave, defendant was not to be found in the county.

STATE OF NORTH CAROLINA

COUNTY OF VANCE

I, Henry W. Hight, Clerk of the Superior Court of Vance County, State of North Carolina, which Court is a Court of Record, having an official seal, which is hereto attached and affixed, do hereby certify the foregoing and attached Schedule of Jury Service (Two (2) Sheets) to be a true copy of excerpts from Minute Docket No. 23 of Vance County, said excerpts containing a list of Negro Jurors drawn from the Jury Box which was prepared in July 1949 and showing said jury service from that date until January, 1951, as the same is taken from and compared with the original now on

file in this office. This list includes those not to be found within the county and those who were deceased for the terms of court thereon shown.

In witness whereof, I have hereunto set my hand and affixed the seal of the Superior Court of Vance County at my office in Henderson, North Carolina, this the 3rd day of April, 1951, in the year of our Lord, 1951.

Henry W. Hight
Clerk Superior Court

(Seal)

(DULY EXEMPLIFIED, R. 50-53)

STATE'S EXHIBIT IV

CERTIFIED CERTIFICATE OF DEATH
OF REV. MOSES M. BULLOCK**Certified Certificate of Death**NORTH CAROLINA,
County of VanceOFFICE OF REGISTER
OF DEEDS

This is to certify that Rev. Moses M. Bullock
Sex Male, *Race* Col., *was born the* *day of* , 1
and died the 23 *day of* Aug. 1948, *at the age of* 78 *years*
in Henderson *Township,* Vance *County, State of*
North Carolina, U.S.A. Cause of death, Entuitis Myocarditis
Buried in St. Delight *Cemetery, the* 26 *day of* Aug., 1943.
Name of Father Gilbert Bullock *Name of Mother* Unknown
Attending Physician R. T. Upchurch *Address* Henderson
Registration District No. 91-01 *Certificate No.* 55
Filed 10/1 1948 *H. M. Robinson Local Registrar*
According to Records of Vital Statistics of this Office
Vol. 35 *Page* 185

WITNESS my hand and official seal, this the 3rd *day*
of April, 1951.

H. M. Robinson
 Register of Deeds.

[Official Seal] Vance County, North Carolina.

NORTH CAROLINA

VANCE COUNTY

I, H. M. Robinson, Register of Deeds of Vance County, State of North Carolina, having an official seal, which is hereto affixed, do hereby certify that the foregoing and attached Certificate of Death to be a true copy of the same as taken from and compared with the original now on file in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of the Register of Deeds of Vance County, at my office in Henderson, North Carolina, this the 3rd day of April, in the year of our Lord, 1951.

H. M. Robinson
Register of Deeds

(SEAL)

(DULY EXEMPLIFIED, R. 47-49)

STATE'S EXHIBIT V

JURY SCROLL, GRAND JURY, AUGUST TERM, 1948
BERTIE COUNTY SUPERIOR COURT

Be it remembered that a regular term of the Superior Court for the County of Bertie is begun and held at the Courthouse in Windsor, North Carolina, on the first Monday before the first Monday in September, 1948, it being the 30th day of August, 1948. His Honor R. Hunt Parker, the Judge assigned by law present and presiding.

E. R. Tyler, Solicitor for the State, present and prosecuting.

The following Grand Jurors who were sworn at the February Term, 1948, to serve for a period for one year are present: C. L. Askew, Alonzo Hoggard, Malcolm Browne, Raleigh Pritchard, E. L. Baker, M. H. Taylor, R. D. Baker, John F. Early and G. P. Perry and George B. Darden, W. A. Tadlock, Jr., R. C. Biggs, negro, T. E. Alston, L. G. Evans, B. F. Hoggard, O. C. Moore, C. L. McCoy and Frank Pritchard, negro, who were drawn by the County Commissioners of Bertie County pursuant to Chapter 171 Public-Local and Private Laws of 1937 are sworn to serve for a period of one year.

NORTH CAROLINA

BERTIE COUNTY

I, Geo. C. Spoolman, Clerk of the Superior Court of Bertie County, North Carolina, do hereby certify the foregoing to be a full, true and correct copy as appears from Minute Docket No. 13 at Page 236 of the Superior Court of Bertie County.

Witness my hand and official seal this the 12th day of April, 1951.

Geo. C. Spoolman

Clerk of the Superior Court of
Bertie County, North Carolina

(SEAL)

(DULY EXEMPLIFIED, R. 45-46)

STATE'S EXHIBIT VI

CERTIFICATION OF GRAND JURY SERVICE
BY R. C. BIGGS AND FRANK PRITCHARD

NORTH CAROLINA

BERTIE COUNTY

J. A. Pritchard, being duly sworn, says: That he is a member of the Bertie County Bar; that he is personally acquainted with R. C. Biggs and Frank Pritchard, both of whom are members of the negro race; that R. C. Biggs and Frank Pritchard were duly sworn as members of the Grand Jury of Bertie County at the August Term, 1948 to serve for a term of one year; that they served upon the Grand Jury of Bertie County at the said August Term 1948, the November Term 1948, the February Term 1949, and the May Term 1949.

J. A. Pritchard

Sworn to and subscribed before me, this the 12th day of April, 1951.

Geo. C. Spoolman
Clerk of the Superior Court

(SEAL)

(R. p. 64)

NORTH CAROLINA
BERTIE COUNTY

SUPERIOR COURT
AUGUST TERM, 1949

STATE OF NORTH CAROLINA
vs.
RALEIGH SPELLER

FINDINGS OF FACT AND RULING ON MOTION
CHALLENGING ARRAY

Upon considering the written motion of defendant filed challenging the entire array of petit jurors and special veniremen summoned from Vance County, and the evidence offered thereon, the Court finds the following facts:

The regular term of Bertie County Superior Court convened at 10 A.M. on Monday, August 29, 1949, and after the organization of the Court the case of STATE v. RALEIGH SPELLER was called for trial, and the defendant was brought in Court and in his presence, and in the presence of his counsel, was duly and legally arraigned to be tried upon a bill of indictment charging him with the capital offense of rape. The defendant pleaded "Not Guilty" upon his arraignment. After the plea the defendant in his own proper person, and by his counsel, filed a written motion and affidavit stating that he could not obtain a fair and impartial trial in Bertie County, and requested that a jury be summoned from some other county for the trial. The Solicitor for the State made no objection to this motion, and requested and stated that counsel for defendant might suggest to the Court the County from which a special venire should be summoned for the selection of a jury. Defendant's counsel suggested that the venire from which the said jury should be selected be summoned from the most remote county in the Third Judicial District, the same being Vance County. Following the suggestion of defendant's counsel, and with the consent of the Solicitor for the State, the Court ordered that a venire of 100 jurors be summoned from Vance County, and that said special venire be drawn from jury Box No. 1 of Vance County in

the manner provided by law, and in the presence of the defendant, Raleigh Speller, and one or more of his attorneys, and in the presence of the Solicitor for the State.

With the consent of counsel for defendant and the Solicitor for the State this special venire was drawn in the Court house in Vance County at 4:30 P.M. on August 29, 1949, in the manner provided by law, and in the presence of the defendant, Raleigh Speller, one of his attorneys, Herman L. Taylor, and also E. R. Tyler, Solicitor.

That the names of the persons drawn from said jury box were duly certified by the Clerk of the Superior Court of Vance County to the Sheriff of Vance County, and of the 100 names so selected in said special venire, 63 of said jurors reported and were present at the Courthouse in Windsor, North Carolina, at 10:30 A.M. on August 31, 1949. That the 37 jurors not appearing consisted of some who could not be found by the Sheriff of Vance County or his deputies; that a number were not physically able to attend court and presented to the Court doctor's certificates certifying as their illness and inability to attend court and serve as jurors; that of the 100 jurors drawn for the special venire, 7 were members of the negro race, and of the number reporting at the Courthouse in Windsor, N. C. for jury duty 4 were negroes.

The Court finds as a fact that the special venire from Vance County was drawn in compliance with the General Statutes of North Carolina, Chapter 9, Sections 1, 2, 3 and/or 9 and the Constitution and laws of the United States.

After said special venire reported for jury duty in Bertie County on August 31, 1949, and before the selection of the petit jury was begun, defendant filed, in writing, a motion and challenge to the entire array, which motion appears in the record. The Court directed the Solicitor for the State and counsel for defendant to proceed with the selection of a jury advising the defendant's counsel that they would be given ample time to present evidence upon said motion. Whereupon, after the defendant was properly warned, selection of the jury was begun for the trial of the defendant.

Defendant's counsel exhausted 14 peremptory challenges before the twelfth juror was selected, and upon the twelfth juror being presented again peremptory challenged said juror, which the Court disallowed for the reason that defendant had theretofore exhausted all challenges allowed him by the laws of North Carolina.

Thereupon the Court ordered the juror properly sworn and seated.

The Court then inquired of defendant's counsel the time they needed to prepare and present evidence upon the motion and challenge to the array. Defendant's counsel stated that they would be ready to go into the hearing on this motion as soon as witnesses, which they desired from Vance County, could be summoned and report to the Court. Subpoenae were issued at the instance of defendant's counsel for the Sheriff of Vance County, Clerk of the Superior Court of Vance County, the five members of the Board of County Commissioners of Vance County, the Tax Collector for Vance County, and the Register of Deeds of Vance County, who were duly summoned and appeared in Court with the records of persons drawn for jury service in Vance County for the past 15 years; also at request of defendant's counsel the jury box of Vance County was brought into Court.

The foregoing witnesses, with records requested, appeared at the Courthouse in Windsor, N. C. on Thursday, September 1, 1949, and the defendant's counsel offered as witnesses in behalf of their motion, the Register of Deeds and Clerk to the Board of County Commissioners of Vance County, the Sheriff of Vance county, the Tax Collector of Vance County, and the Chairman of the Board of County Commissioners of Vance County, and several members of the colored race.

At the request of defendant's counsel the jury box of Vance County was opened in the presence of the Court and the officials of Vance County, and the scrolls contained therein were examined. The Court finds that of the scrolls examined from Jury box No. 1 more than 100 scrolls contained the names of members of the negro race, and there

were several hundred of the other scrolls in jury Box No. 1, that no evidence was offered as to whether the names appearing thereon were members of the white or colored race.

The Court further finds that all of said scrolls contain the name of the person, and after the name a number which designates the Township in which said person resides in Vance County, and that on some of the scrolls between the name of the person and the number of the Township in which said person resides, there appears a dot or period, but there is nothing on said scrolls to indicate whether the name on said scroll is that of a colored or a white person, the dot or period appearing upon scrolls that contain names of both white and colored persons. The Court further finds that the names upon said scrolls were typewritten, and were written by more than one typist.

The Court further finds that the jury box for Vance County was purged and revised on the first Monday in July 1949, in full compliance with the law, and that at said time the said commissioners of Vance County caused the names on the jury list to be copied on small scrolls of paper of equal size, and put into a properly divided jury box, which said box was locked with two locks, and one of the keys kept by the Sheriff of Vance County, and the other by the chairman of the Board of Commissioners of Vance County, and the jury box kept by the Clerk to the Board.

The Court further finds that in the purging of said jury list, and causing the names of persons to be placed in jury box No. 1 for jury services in Vance County, that there was nothing said or done in the selection and in the passing upon the qualifications of said jurors to intentionally or purposefully discriminate or exclude in any manner or form, members of the negro race from said jury box, and that the said commissioners of Vance County have placed the names of such persons of both white and colored races in said jury box as they found possessed intellectual qualifications and moral character, and met all requirements of law as provided by Chapter 9 of the General Statutes of North Carolina, regardless of race, color or creed.

The Court further finds that of the 44 persons examined from the special venire as prospective jurors, there were five white persons ranging in age from 39 to 70 years; who stated that they had never before been summoned for jury service in Vance County.

The Court further finds that the officials, whose duty it is and was to prepare the jury list, and draw the panel of veniremen summoned by the Sheriff of Vance County, from which the special venire was drawn for the trial of this cause, have not selected and summoned jurors for said special venire in violation of the General Statutes of 1943, Chapter 9, Sections 1, 2, 3 and/or 9, and the Constitution and laws of the United States with the unlawful and avowed purpose of discriminating against persons of the negro race.

The Court further finds that the defendant has failed to offer any evidence to show any act or conduct on the part of the officers of Vance County, upon whom the law imposes the duty of preparing the jury list, to show any discrimination or disproportionate representation of qualified jurors of the negro race, nor is there evidence that a single negro, who at the time of the selection of said jury list by said Board of Commissioners qualified to serve upon the jury, has been excluded from said jury list.

The Court further finds that defendant's counsel stated at the close of the evidence offered upon their motion, that they desired to offer no additional evidence in support of said motion.

Thereupon, it is ordered, considered and adjudged that the aforesaid motions made by the defendant, Raleigh Speller, and his counsel be, and they are hereby denied.

W. I. HALSTEAD,
Special Judge, Presiding.

Defendant EXCERPTS to foregoing findings of fact and ruling.

EXCEPTION NO..... (S.R. 57-63)

STATUTES

Chapter 7, General Statutes of North Carolina:

§ 7-63. *Original jurisdiction.*—The superior court has original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for thirty days; and of all such affrays as shall be committed within one mile of the place where, and during the time, such court is being held; and of all offenses whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not within twelve months after the commission of the offense proceed to take official cognizance thereof.

Chapter 14, General Statutes of North Carolina:

§ 14-21. *Punishment for rape.*—Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death: Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the state's prison, and the court shall so instruct the jury.

Chapter 9, General Statutes of North Carolina:

§ 9-1. *Jury list from taxpayers of good character.*—The board of county commissioners for the several counties, at their regular meetings on the first Monday in June in the year 1947, or the jury commissions or such other legally constituted body as may in the respective counties be charged by law with the duty of drawing names of persons for jury service, at the times of their regular meetings, and every two years thereafter, shall cause their clerks to lay before them the tax returns for the preceding year for their county, and a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of age, from which lists the board of

county commissioners or such jury commissions shall select the names of such persons who reside in the county who are of good moral character and have sufficient intelligence to serve as members of grand and petit juries. A list of the names thus selected by the board of county commissioners or such jury commissions shall be made out by the clerk of the board of county commissioners or such jury commissions and shall constitute the jury list of the county and shall be preserved as such.

The clerk of the board of county commissioners or such jury commissions, in making out the list of names to be laid before the board of county commissioners or such jury commissions, may secure said lists from such sources of information as deemed reliable which will provide the names of persons of the county above twenty-one years of age residing within the county qualified for jury duty. There shall be excluded from said lists all those persons who have been convicted of any crime involving moral turpitude or who have been adjudged to be non compos mentis.

• § 9-2. *Names on list put in box.*—The commissioners at their regular meeting, on the first Monday in July in the year nineteen hundred and five, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.

§ 9-3. *Manner of drawing panel for term from box.*—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is for the trials of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose

names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

§ 9-6. *Jurors having suits pending.*—If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury box.

§ 9-7. *Disqualified persons drawn.*—If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

§ 9-8. *How drawing to continue.*—The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

§ 9-19. *Exemptions from jury duty.*—All practicing physicians, licensed druggists, telegraph operators who are in the regular employ of any telegraph company or railroad

company, train dispatchers who have the actual handling of either freight or passenger trains, regularly licensed pilots, regular ministers of the gospel, officers or employees of a state hospital for the insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, all millers of grist mills, all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers, brakemen and railroad conductors in active service, radio broadcast technicians, announcers, and optometrists, registered or practical nurses in active practice and practicing attorneys at law, and all members of the national guard. North Carolina state guard and members of the civil air patrol, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserve, who comply with and perform all duties required of them as members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, shall be exempt from service as jurors.

§ 9-24. *How grand jury drawn.*—The judges of the superior court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first eighteen drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court.

§ 9-29. *Special venire to sheriff in capital cases.*—When a judge of the superior court deems it necessary to a fair, and impartial trial of any person charged with a capital offense, he may issue to the sheriff of the county in which the trial may be a special writ of venire facias, commanding him to summon such number of persons qualified to act as jurors in said county as the judge may deem sufficient (such number being designated in the writ), to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ and return it to the clerk of the court on the day when it is returnable, with names of the jurors summoned.

§ 9-30. *Drawn from jury box in court by judge's order.*—

When a judge deems a special venire necessary, he may, at his discretion, issue an order to the clerk of the board of commissioners for the county, commanding him to bring into open court forthwith the jury boxes of the county, and he shall cause the number of scrolls as designated by him to be drawn from box number one by a child under ten years of age. The names so drawn shall constitute the special venire, and the clerk of the superior court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the sheriff. If the special venire is exhausted before the jury is chosen, the judge shall order another special venire until the jury has been chosen. The scrolls containing the names of the persons drawn as jurors from box number one shall, after the jury is chosen, be placed in box number two, and if box number one is exhausted before the jury is chosen, the drawing shall be completed from box number two after the same has been well shaken.

H. M. ROBINSON (State Record) BEING RECALLED FOR FURTHER EXAMINATION BY DEFENDANT, TESTIFIED IN PART AS FOLLOWS:

RE-DIRECT EXAMINATION

COURT: Do you mean to testify that you know they are the names of colored people on the scrolls by reason of a dot being there?

A. No, sir; if I know him as John Jones, I know him, and that is the only way I know. . . . Luther H. Fuller is colored; I do not see a dot there. Peter B. Small, I don't know him; dot by name. Mabel Jackson, colored; dot by name. Peter Harris, I don't know; dot by name. Frank D. Bullock, colored; dot by name. . . . Clarence Green, I only know a white Clarence Green; dot after his name. W. T. Brooks, I don't know; dot by name. E. A. Jordan, colored; dot after name. . . . Ella Davis Lee, I don't know; there is a white lady by the name of Lee but I don't know; dot by that name. . . . Johnny Crudup, we have a John Crudup who works in the bank and he is white; dot by that name. . . . C. H. Hendricks, he is white and lives in the Sandy Creek Township; has a dot by that name. . . . Louis Smith, I think he is white; the only Smiths I know in that Township are white; dot by name. . . . Robert E. Wyche, I think he is white; dot by name. . . . Nelson H. Hicks, the only people I know in that Township by name of Hicks are white; dot by name. . . . John A. Hall, white; dot by his name. . . . Fred Brame, I think he is white; dot by name. (S.R. 46, 47, and 48).

H. M. ROBINSON (State Record) TESTIFIED IN PART AS FOLLOWS:

CROSS EXAMINATION BY THE STATE

Q. Was there in the purging and revision of this jury list any systematic purpose or effort to exclude any member of the colored race on account of their color?

- A. There was not.
- Q. I ask you if the jury box from which the special venire was drawn for this trial was composed of both white and colored jurors in fair proportion to the number among the races, and the people who were qualified from both races from a moral standing and character, and moral fitness to serve as jurors?
- A. It was. The ratio of colored people to white in Vance County is about 35 per cent colored people.
- Q. Do you know of anything, or see any act done, anything said that would have for its purpose the exclusion of names of Negroes, or members of the Negro race from the jury box of your County on this occasion?
- A. No.

(S.R. 21-22)

H. M. ROBINSON BEING RECALLED TESTIFIED IN PART AS FOLLOWS:

EXAMINATION BY THE COURT

These scrolls were made up under my supervision. The lists were made up for the jury list to be revised, and when they went over the lists some of the names were dotted and some were marked out, and those marked out were cut out and thrown away. (S.R. 45)

E. A. COTTRELL (State Record) AGAIN RECALLED FOR EXAMINATION BY DEFENDANT TESTIFIED AS FOLLOWS:

CROSS EXAMINATION

We do not identify anybody from these scrolls by the dots or periods; the way we draw the scrolls is by a child under ten years of age. The Deputy Sheriff or myself bring in a child and keep the scrolls stirred up. The only time we put our hands in the box is to stir them up, and the child reaches in and pulls out one at a time. And I pass it to the Chairman of the Board of

Commissioners, and he calls out the name and two or three different people put down the names, and that is what was done when this special venire were drawn for the Speller case.

Q. Was the special venire drawn from the box on Monday without any discrimination whether it was a colored or white person?

A. There was no discrimination, and I have never seen or heard tell of those dots before today.

Q. Was there any discrimination practiced in the drawing of that special venire?

A. No, sir, there was no discrimination.

Q. Were the names then copied by two different people in the office and a list made of the persons drawn?

A. Yes, and this done in the presence of the defendant and of defendant's counsel. There were not any names put aside drawn for this special venire.

(S.R. 50-51)

G. W. KNOTT (State Record) TESTIFIED IN PART AS FOLLOWS:

DIRECT EXAMINATION BY THE STATE

I am a farmer and member of the Board of Commissioners of Vance County, and have been a member for five years. I was present at the July 1949 meeting.

Q. At that meeting I ask you whether or not the jury boxes of Vance County were purged by the Board of Commissioners?

A. They were.

Q. I ask you to state whether or not at the beginning of the purge all scrolls theretofore in the jury boxes were taken out and destroyed?

A. They were.

Q. In making up the new jury list I ask if the Board of Commissioners of Vance County placed in jury box No. 1 the names of persons who were residents and taxpayers of Vance County who had paid their taxes

for the preceding year, and who were persons of good moral character, and in the opinion of the Board of Commissioners of Vance County were qualified to serve as jurors, without any purposeful discrimination as to race, color or creed?

* * * * *

A. Yes, those scrolls were presented to the Board in their entirety. They were passed around to the commissioners and we looked over the lists. Those whom we knew to be dead, or who had criminal records, insane, or in County Hospital and incompetent—we struck those names off, both white and colored. From the scroll lists I did not know the white from colored, just the names. After that was done then the scrolls list was passed to the Clerk to the Board and to the members of the Board, and they were clipped off with scissors and put in Box No. 1. Colored persons' names were put into the jury box, I saw that with my own eyes. There was no discrimination with the colored or white names by the Board of Commissioners.

Q. Was there anything on the actual scroll placed in the box to discriminate as between the races?

* * * * *

A. There was not; absolutely I heard none. The jury box has been purged every two years since I have been a commissioner. (S.R. 33)

G. W. KNOTT, BEING RECALLED BY THE STATE
TESTIFIED AS FOLLOWS:

EXAMINATION BY MR. PRITCHETT

RE-DIRECT EXAMINATION

That I have been on the Board of Commissioners for 5 years.

Q. The dots appearing upon any scrolls in the jury box, I ask if they were put there for the purpose of discrimination of jurors, as to whether they were white or colored?

* * * * *

- A. In looking over and observing the scrolls I have never found any dots. There may have been some on there but I have never observed a single dot while I was looking at them..
- Q. Have you, or any of the other commissioners, in this purging of your jury box, caused to be placed on any scrolls in the jury box any dot or period for the purpose of designating whether the juror was white or colored?

A. We have not. (S.R. 53)

L. B. FAULKNER, (State Record) BEING RECALLED BY THE STATE, TESTIFIED:

RE-DIRECT EXAMINATION BY SOLICITOR

- I am the Deputy Sheriff of Vance County, and that the Sheriff and I was present when the special venire was drawn for the case of STATE v. RALEIGH SPELLER in the courthouse of Vance County. My little daughter, Carolyn Faulkner, age 6 years, drew the names from the jury box No. 1. And that is the jury box counsel for defendant have been examining here today and found 104 scrolls of colored people. Only one name was stricken out after it was drawn from the jury box, it was that of J. B. Satterwhite; he is sick and it was so announced. All agreed that it be stricken.
- Q. Was there any discrimination in drawing the names from Box No. 1 against negroes or any other race?
- A. I read the names as the little girl handed them to me; there was no discrimination of any kind.

QUESTIONS BY THE COURT:

Yes, I summoned some of these jurors, and I read the names as they were drawn from the box, and I could

not tell by looking at the scrolls whether they were white or colored, by the dots or periods.

EXAMINATION BY THE STATE CONTINUED

There were seven colored people drawn in this special venire. (S.R. 54)

MARK C. WOODLIEF, (State Record) BEING RECALLED BY THE STATE, TESTIFIED:

RE-DIRECT EXAMINATION BY THE STATE

There was no mark placed on the scrolls to designate whether that name was colored or white.

Q. Has any dot, period or mark been placed on the scroll or name appearing in the jury box for the purpose of discriminating as between the races?

* * * * *

A. No, and never heard of it before today.

F. H. ELLINGTON, (State Record) WITNESS FOR DEFENDANT, TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION BY THE STATE

I am Chairman of the Board of Commissioners, and this special venire were drawn Monday from the boxes in Vance County after the boxes were purged in July of this year.

Q. Has there been, since you have been Chairman or any time, any purposeful discrimination as between the races, colored and white, in any of the names put in the jury box when it was purged?

* * * * *

A. No there has not, and at no other time in our county to my knowledge. The commissioners select names of the jury from the tax books, it would be hard to say

what names we select; we just go down the line in the tax books.

Q. In selecting these names from the tax lists were they selected from the standpoint of law abiding citizens, taxpayers and persons of good moral character?

* * * * *

A. Yes, and I followed that proceeding in the selection of the names of colored people. (S.R. 16-17)

F. H. ELLINGTON, (State Record) BEING RECALLED BY THE STATE, TESTIFIED AS FOLLOWS:

RE-CROSS EXAMINATION BY THE STATE

Q. Did you know until the jury box was opened here to-day there was any period or other marking appearing after the name on any scroll in the jury box, and before the township number?

A. No.

Q. Was any period, dot or other marking placed upon any of the scrolls in the jury box of Vance County when it was purged for the purpose of designating whether the name appearing on the scroll was the name of a white or a colored person?

* * * * *

A. No.

Q. Was any period, dot or other marking placed after the name on any scroll appearing in the jury box of Vance County when it was purged in July of this year, for the purpose of discriminating as between the races?

* * * * *

A. There was not.

Q. Did the County Commissioners of Vance County intentionally cause to be placed upon the scrolls opposite the names of any jurors, or prospective jurors in Box No. 1 of Vance County, any dot, period or marking for the purpose of intentionally discriminating between the races?

* * * * *

A: No, sir. (S.R. 56).

MARK WOODLIEF (Federal Transcript) TESTIFIED
AS FOLLOWS:

CROSS EXAMINATION BY MARK WOODLIEF
BY MR. RHODES

Q. This list was brought by Mr. Robinson according to the instructions of the board of county commissioners?

A. Yes, sir.

Q. Brought to the board and the board checked the list?

A. That's right.

Q. At that time was there anything on the list which would indicate to you whether a man was a negro or white man?

A. No, sir.

Q. Was the question discussed at that time as to whether or not any particular person was negro or white man?

A. No, sir, or I didn't know it.

Q. Was the race question raised in the purging of this box?

A. No, sir.

Q. When you looked over this list did you see the dots before or after the names of any persons?

A. I didn't see any dots.

Q. If there were any dots upon that list at the time submitted to the board did it indicate to you as to whether or not the person before or after whose name it appeared was a negro or white man?

A. No, sir, I wouldn't have known the difference. I just knew the man.

Q. I will ask you to state whether or not the county commissioners of Vance County in purging the jury placed in box No. 1 the names of all persons whom the board determined to be residents and taxpayers of Vance County who had paid their taxes for the preceding year and were of good moral character and sufficient intelligence irrespective of race?

THE COURT: His question was did you do that without regard to whether a person was white or colored?

A. Yes, sir, put them all in.

Q. To your knowledge was the name of any negro eliminated from the list submitted to the board?

A. No, sir.

Q. You stated that the list was turned back to Mr. Robinson with instructions that he place those names in the jury box?

A. Yes, sir.

F. H. ELLINGTON (Federal Transcript). TESTIFIED AS FOLLOWS:

CROSS EXAMINATION OF F. H. ELLINGTON
BY MR. RHODES

Q. Mr. Ellington, Mr. Robinson is clerk to your board of county commissioners?

A. Yes, sir.

Q. When you got ready to purge this box you requested him to furnish you or the board of county commissioners with a list from which the board of county commissioners selected the names to go in the box?

A. Yes, sir.

Q. You know for how many years he has been doing this?

A. No, sir, I don't. Mr. Robinson has been register of deeds for quite a while.

Q. When he brought the list in to you you took the list and went around to each commissioner and each commissioner checked the list?

A. Yes, sir.

Q. And then when the list had been checked it was turned back to Mr. Robinson with instruction to place those names in the jury box?

OBJECTION BY PETITIONER

Q. After the list had been checked by the board of county commissioners I ask you what instructions, if any, you

gave to Mr. Robinson as to what he was to do with those names?

A. I don't remember the exact words but it was understood he would cut them up in strips and put them in the box.

Q. Did you instruct him to put them in the box?

A. Yes, sir.

Q. Then the first list drawn out of that box after it was purged was at the trial of this case?

A. I don't know. I wasn't present.

Q. Were you present at the selection of the special venire to go to Bertie County?

A. No, sir.

THE COURT: When was it drawn?

A. August, 1949.

MR. BROGDEN: That was the first list drawn out of the box.

Q. Were you present at the hearing in Bertie County?

A. Yes, sir.

Q. I ask you whether or not you knew of any dots which appeared on the names of any list prior to the time they were drawn out of the jury box in Vance County?

A. No, sir.

Q. Did you put any dots before or after the name of any person?

A. No, sir.

Q. See any member of the board of county commissioners do that?

A. No, sir.

Q. In the selection of the names which went in the jury box state whether or not any consideration was given as to whether that person was a negro or a white person?

A. No, sir.

Q. State whether or not you had any way of knowing whether or not names put in the box or taken out of the box were either negroes or white except your personal knowledge of the man?

A. No, sir, that was the only way I could identify them.

- Q. What was the basis of the selection of the names that went in the box? What did you take into consideration?
- A. Well, a man's reputation, whether I knew him, or whether I knew the man guilty of being in court a lot, or physically handicapped. Of course some of them might have been put in like that but if so I didn't know the man.

W. H. BLACKNALL (Federal Transcript) TESTIFIED
AS FOLLOWS: -

CROSS EXAMINATION OF W. H. BLACKNALL
BY MR. RHODES

- Q. The list was brought to you by the clerk to the board?
- A. Yes, sir.
- Q. He brought the list made up from the tax list?
- A. Yes.
- Q. And the list circulated around to the board?

OBJECTION BY PETITIONER

MR. GATES: I don't think it fair and competent for counsel to lead him, ask him questions and he say "Yes" and "No".

THE COURT: I see no objection to the cross examination so far. Just be careful about it.

- Q. You stated you did mark off two or three names. You know whether they were white or black?
- A. No, I don't remember.
- Q. As to the names stricken off by various members of the board, did you hear any discussion as to whether or not any of them were negroes or whites?
- A. No, sir, I didn't.
- Q. In going over this list did you observe any dots before or after any names of persons whose names appeared thereon?
- A. No, sir.
- Q. In looking at that list did you have any way to tell from the list other than your personal knowledge of

the man as to whether or not the person named on the list was negro or white?

A. No, sir.

Q. And that list was turned back to the register of deeds who was clerk to your board?

A. That's right.

Q. What instructions if any did you give him as to what to do with the list?

A. Didn't give him any instructions. It was customary that he should put them in the jury box.

Q. Did you ever suggest to Mr. Robinson that he in any way eliminate from the list submitted to the commissioners the names of any negroes?

A. No, sir.

Q. Ever discuss with him the question of placing dots before or after any particular name on the list?

A. No.

Q. When you passed upon that list what was the basis of your approval of the list?

A. If any commissioner knew of any cause why he didn't think a person was eligible to serve on the jury we marked it out.

Q. Did that apply to negro and whites alike?

A. Yes, sir.

Q. The action that was taken in approving this list, was that taken just by individual members of the board or by the board as a body?

A. By the board as a body.

Q. Mr. Blacknell, have you ever heard the question discussed before the board of county commissioners or by the board of county commissioners as to whether or not any negro's name should be eliminated from the jury box?

A. No, I never have.

Q. Did you place all names in there irrespective of whether or not they were black or white?

A. Yes. If no cause for marking it out we left it on the list.

Q. Would you say that a person who was a negro that

his name was eliminated from the box solely because he was a negro?

A. No, sir.

Q. Were you in the courtroom in Bertie County?

A. Yes, sir.

Q. State whether you had any knowledge of whether dots were before or after the names of any person?

A. Never heard of those dots until it was brought up in Bertie County.

Q. You now know why they were put on there?

A. No, sir.

Q. If there were any dots after the names on the list would that indicate to you whether they were black or white?

A. No, sir.

Q. You know anything about the race of persons who have served on the jury since July, 1949?

A. You mean has any negro been drawn?

Q. Yes.

A. I don't remember.

Q. You don't know of your own knowledge whether negroes served on the jury or were drawn from the jury box to serve on the jury in Vance County either before 1949 or after 1949?

A. No, I don't.

* * * * *

RE-CROSS EXAMINATION OF W. H. BLACKNALL
BY MR. RHODES

Q. To your knowledge has the name of any person been eliminated from the list of names drawn from the jury box because of any dot appearing before or after the name?

A. No, sir.

E. A. COTTRELL (Federal Transcript) TESTIFIED AS
FOLLOWS:

CROSS EXAMINATION OF SHERIFF COTTRELL
BY MR. BROGDEN

- Q. You couldn't testify that you actually never saw any negroes on the jury prior to 1949?
- A. I don't remember but it seems to me one or two but I am not certain.
- Q. You mentioned that you had been at every term of court?
- A. I haven't skipped a term of court there in twenty years.
- Q. Have you seen any negroes on the jury recently?
- A. Yes.
- Q. What terms of court?
- A. October and January.
- Q. How many on the jury in October?
- A. Five I think. Four I know. Three in October and four or five, I know four at the January term of court.
- Q. You have any members of the negro race on the grand jury?
- A. Yes, one or two and they asked the foreman to excuse them.
- Q. Any of them serve?
- A. Not on the grand jury. Two of them served on the October jury. Stayed there all the time.
- Q. You say you send out post cards for the regular jury?
- A. I send them a card. It is a double card. They sign that card that they will accept service, tear that off and return it.
- Q. If the card is not returned what do you do?
- A. Mark on it not served.
- Q. Do you on occasions try to find them?
- A. If no one answers to the name the Judge has to have an excuse why they won't serve. Either sick or out of the county.
- Q. You attempt to serve every one on the list?
- A. Yes, sir. Sometimes the card comes back and the mail man says not to be found. Therefore we report back to the court.
- Q. You haven't given instructions to your deputies not to serve people because they are of the negro race?
- A. No, sir.
- Q. You haven't failed to serve any one of the negro race?
- A. No.

- Q. You serve every one on the list brought to you?
A. Ye sir.
Q. And your deputies are instructed to do that?
A. Yes.
Q. How are you paid?
A. Paid by the names. We get fifty cents apiece for every juror summoned. County auditor pays it to us.
Q. You are on salary?
A. Yes. We don't get the fee. Take it out of one pot and put it back in another pot.
Q. Was Thaddeus Jackson on the grand jury?
A. He was on there in October?
Q. He did serve on the grand jury?
A. Yes, him and another one.
Q. How is your grand jury selected?
A. Twice a year. Each one serves six months.

THE COURT: You draw nine at the time?

- A. No, sir, the whole eighteen is drawn at once.
Q. You don't have the stagger system?
A. No, sir.
Q. Were you at the October term of Court, 1949 when they had quite a few special venires for the Carolina Light and Power Company?
A. Yes.
Q. Were any negroes drawn on jury duty at that term of court?
A. Yes.
Q. About what would your estimate be of the number drawn?
A. Four or five. I never paid any attention to them. After, I send them out I throw the cards away. The Clerk keeps a list of the jury and we don't bother with it.
Q. How about the term the first part of 1950, January, 1950?
A. I can't remember back.
Q. Do you remember whether a man by the name of Bullock was on the grand jury. E. A. Bullock?
A. Yes, E. A. Bullock, high school teacher in Henderson.

THE COURT: Was he on the grand jury?

A. Yes, sir.

Q. How about the June term, 1950?

A. I can't recall right off-hand. We have had so many since then.

Q. Isn't it common knowledge or from your own personal knowledge isn't it true that negroes have consistently served on grand and petit juries from July, 1949 until the present date?

A. Yes, sir. This last grand jury two on there that asked the foreman to excuse them because they had work to do.

Q. I was in your office one day and several people wanted to know if they could be excused?

A. Uncle Jim Henderson came in.

Q. What does your department tell them?

A. Told them no way I could excuse them. They would have to go before the Judge, that that was his business and he would have to excuse them.

Q. You never excused anybody?

A. Unless I know unable to get there and I put the reason not served. I know this last court I was sitting in my office and Robert Hawkins came in and brought the card and asked me to excuse him and I knew he was in a critical condition, and has since died, and I told her to forget him.

Q. If you serve a man it is made an official record of the court?

A. Yes, sir.

Q. Do the county commissioners in any way consult you about any one?

A. Myself or one of the other officers always present when they draw the jury out of the box. We have a little girl or child under ten years old.

Q. Were you present when the Bertie venire was drawn?

A. I wasn't there but my deputy, Mr. Falkner, was there.

Q. Was Mr. Falkner there all the time?

A. Yes, sir. His little girl drew the jury.

Q. You get personal service when you have a special venire?

A. Either call them over the telephone or go to see them direct.

Q. You followed the same procedure in that as with the post card, you try to summon everybody on the list?

A. Yes, and if we send the cards out I go a day or two before court and check the cards back and those who haven't sent cards back if we can contact them by telephone we call them and if we can't get them we make an effort to see him.

Q. You make an effort to see that every juror is served?

A. Yes, sir, have to do it or the Judge will want to know why.

Q. I direct your attention to the present term of court you are having. Is J. A. Henderson one of the jurors serving at the January Term, 1951?

A. He didn't serve. He came up and got excused.

Q. He was summoned?

A. Yes, and brought his card in.

Q. How about Philip E. Reed?

A. No served the past term.

Q. Were both of those two negroes?

A. Yes, sir. I know them very well.

Q. How about R. E. Wimberly?

A. I will be fair with you I don't know R. E. Wimberly.

Q. How about Frank Edwards?

A. I know him.

Q. Did he serve?

A. Yes, sir.

Q. And he is a negro?

A. Yes, sir.

Q. How about William Cousins, Sr.?

A. He was summoned from No. 6.

Q. Did he serve?

A. This last court?

Q. Yes.

A. I think he did. I think he stayed in the courthouse the whole week.

- Q. What about Walter Christmas?
- A. He served.
- Q. He is a negro?
- A. Yes, sir.
- Q. How about Cyrus Boyd?
- A. He served. He lives in town.
- Q. He is a negro?
- A. Yes, sir.
- Q. The last term of court there were a considerable number?
- A. Four or five that served.
- Q. Two could have been jurors but they asked to be excused?
- A. Yes, sir. My information from the foreman was he wanted to be excused.
- Q. From your personal knowledge would you say this situation is typical of most grand and petit juries from 1949 to date?
- A. Yes, sir.
- Q. Do you have any personal knowledge about the dots on the jury list? Did you put any on there or observe anybody putting them on there?
- A. No, sir, never heard of the dots until down in Bertie County.

L. B. FAULKNER (Federal Transcript) TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY MR. BRODGEN:

- Q. State your name?
- A. L. B. Faulkner, deputy sheriff of Vance County.
- Q. How long have you been deputy sheriff of Vance County?
- A. Eight years.
- Q. You have been assisting the sheriff in summoning jurors?
- A. Yes, sir.
- Q. In what manner did you go about summoning jurors?
- A. Regular jury we send a jury card.

- Q. Do you happen to have one of those with you?
- A. This is it. A double card. We fill it out and send it to each person. When they receive it they tear it half in two, sign it and send the half back addressed to the Sheriff.
- Q. About what percentage of the cards do you get back?
- A. Over ninety-nine percent.
- Q. If someone doesn't send a card back what do you do?
- A. Two or three days before court starts we check the list and see who has returned the card and who has not and then try to contact the ones who haven't.
- Q. Either by telephone or personal service?
- A. Yes, sir.
- Q. Have you received any instructions that negroes shall not be served?
- A. No, sir. We send cards to every name handed to us.
- Q. Have your yourself discriminated against negroes for serving?
- A. No, sir.
- Q. To your personal knowledge has any discrimination been practiced?
- A. No discrimination.
- Q. Do you have any personal knowledge of any dots being on the jury scroll?
- A. I didn't until Bertie County.
- Q. You don't know how they got on there?
- A. No, sir.
- Q. The Clerk gave you a list of the ones to be served for jury duty. You know whether there were any dots then?
- A. No, sir.
- Q. You know that any are negroes?
- A. Only way I find out I go to the tax book. In the tax book each name has a number opposite it which denotes the township and then I look in the tax book and find the address.
- Q. You send them out regardless of white or negro?
- A. Doesn't make any difference.

- Q. Do you turn in the list of those who were not summoned?
- A. Yes, sir.
- Q. To whom does that go?
- A. Most of the time we have two lists. The Sheriff keeps one and the other goes into the auditor's office.
- Q. When a person is not summoned what sort of record is made on the clerk of the superior court's record?
- A. Not served.
- Q. How is that indicated?
- A. When court convenes the court calls for the list. The sheriff is there with his list and if the sheriff has not called them we say in open court "Not served".
- Q. Do you make a notation on your list?
- A. "Not served".
- Q. You put that opposite each name?
- A. If he is served I mark a cross or an "X", and the ones that haven't been served I put on "Not served".
- Q. Have you been present at most terms of court?
- A. All except one in the eight years I have been there.
- Q. Have you noticed any negroes on the petit jury since 1949?
- A. They have been drawn from every jury since then.
- Q. Notice any members of the negro race on the grand juries?
- A. Two or three. E. A. Bullock and Thad Jackson served on one and it seems to me William Crews served on one.
- Q. Approximately how many negroes on each petit jury?
- A. From one to five.
- Q. What has been the average number for each term of court?
- A. I would say three or four.
- Q. How many are on your present or January term of court, petit jury, how many negroes on that?
- A. I think five or six names drawn. One was Hawkins who was sick and one more came back "dead".

[fol. 205] UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT

No. 6331

RALEIGH SPELLER, Appellant,

versus

ROBERT A. ALLEN, Warden, Central Prison of the State of
North Carolina, Raleigh, North Carolina, Appellee

No. 6332

CLYDE BROWN, Appellant,

versus

ROBERT A. ALLEN, Warden, Central Prison of the State of
North Carolina, Raleigh, North Carolina, Appellee

Appeals from the United States District Court for the
Eastern District of North Carolina, at Raleigh

OPINION—Filed November 5, 1951

(Argued October 12, 1951. Decided November 5, 1951)

[fol. 206] Before Parker, Soper and Dobie, Circuit Judges

Herman L. Taylor (C. J. Gates on brief) for Appellant
in No. 6331; Hosea V. Price (Herman L. Taylor on brief)
for Appellant in No. 6332; E. O. Brogden, Jr., Attorney for
State Highway and Public Works Commission of North
Carolina, for Appellee in No. 6331; R. Brookes Peters, Jr.,
General Counsel of State Highway & Public Works Com-
mission of North Carolina, for Appellee in No. 6332; (Harry
McMullan, Attorney General of North Carolina, on briefs
for Appellee in Nos. 6331 and 6332).

PER CURIAM:

These are appeals from denials of writs of habeas corpus
in cases in which appellants have been convicted of capital
felonies and sentenced to death by North Carolina state

courts. In both cases the questions raised in the petitions for habeas corpus had been raised and passed upon by the trial court, the action of the trial court had been affirmed by the Supreme Court of the state and the Supreme Court of the United States had denied certiorari.* *State v. Speller* 231 N. C. 549, 57 S. E. 2d 759, cert. denied *Speller v. North Carolina* 340 U. S. 835; *State v. Brown* 233 N. C. 202, 63 S. E. 2d 99, cert. denied *Brown v. Carolina* 341 U. S. 943. In the *Speller* case the court below, after granting the writ [fol. 207] of habeas corpus and hearing evidence on the question presented and deciding that appellant's position was without merit, vacated the writ and dismissed the petition on the ground that upon the procedural history of the case the appellant was not entitled to the writ. In the *Brown* case the petition for the writ was denied without hearing, on the basis of its procedural history. We think that dismissal in both cases was clearly right. In view of the action of the state Supreme Court upon the identical questions presented to the court below and the denial of certiorari by the Supreme Court of the United States, the cases fall squarely within the rule that "a federal court will not ordinarily re-examine upon a writ of habeas corpus the questions thus adjudicated." *Ex Parte Hawke* 321 U. S. 114, 64 S. Ct. 448, 450, 88 L. Ed. 572; *Darr v. Burford* 339 U. S. 200, 70 S. Ct. 587, 94 L. Ed. 761; *Adkins v. Smyth* 4 Cir. 188 F. 2d 452; *Goodwin v. Smyth* 4 Cir. 181 F. 2d 498; *Stonebreaker v. Smyth* 4 Cir. 163 F. 2d 498, 499. As said by this court in the case last cited:

"We are confronted at the outset with the fact that the case presented by petitioner is precisely the same as that in which relief was denied by the Virginia courts and in which certiorari was denied by the Supreme Court of the United States. The rights of petitioner were fully presented in that case and the Virginia courts had full power to grant the relief asked, had

* Two prior convictions of *Speller* on the same charge had been reversed by the North Carolina Supreme Court because of discrimination against Negroes in the selection of juries. *State v. Speller* 229 N. C. 67, 47 S. E. 2d 537; *State v. Speller* 230 N. C. 345 53 S. E. 2d 294.

they thought petitioner entitled to it. The facts were fully before the Supreme Court of the United States on certiorari; and proper respect for that court compels the conclusion that if it had thought that the record showed a denial of petitioner's constitutional rights, certiorari would have been granted and petitioner would have been afforded relief. While action of the Virginia courts and the denial of certiorari by the Supreme Court were not binding on the principle [fol. 208] of *res judicata*, they were matters entitled to respectful consideration by the court below; and in the absence of some most unusual situation, they were sufficient reason for that court to deny a further writ of habeas corpus. It would be intolerable that a federal district court should release a prisoner on habeas corpus after the state courts have refused him relief in precisely the same case on a similar writ and the United States Supreme Court has refused to review their action on certiorari. This would be, in effect, to permit a federal district court to review the Supreme Court of the United States as well as the highest court of the state. The rule in such cases was stated in the case of *White v. Ragen* 324 U. S. 760, 764, 765, 65 S. Ct. 978, 981, 89 L. Ed. 1348, relied on by the court below, as follows: "If this Court denies certiorari after a state court decision on the merits, or if it reviews the case on the merits, a federal District Court will not usually re-examine on habeas corpus the questions thus adjudicated. *Ex parte Hawk, supra*, 321 U. S. 114, 118, 64 S. Ct. 448, 88 L. Ed. 572."

"The citation of *Ex parte Hawk* shows what the court had in mind in the use of the words 'will not usually re-examine' in the statement just quoted; for the court had pointed out in that case the sort of cases in which the district court would be justified in granting habeas corpus notwithstanding the denial of certiorari in cases where the state court had refused to grant relief. These were cases where resort to state court remedies had failed to afford a full and fair adjudication of the federal contentions raised either because the state afforded no remedy or because the

remedy afforded proved in practice unavailable or seriously inadequate."

Affirmed.

[fols. 209-210] UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 6331

RALEIGH SPELLER, Appellant,

vs.

ROBERT A. ALLEN, Warden, Central Prison of the State of
North Carolina, Raleigh, North Carolina, Appellee

JUDGMENT—Filed and Entered November 5, 1951

Appeal from the United States District Court for the
Eastern District of North Carolina.

This Cause came on to be heard on the record from the
United States District Court for the Eastern District of
North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and
adjudged by this Court that the order of the said District
Court appealed from, in this cause, be, and the same is
hereby, affirmed with costs.

November 5th, 1951.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 211] Clerk's Certificate to foregoing transcript omit-
ted in printing.

[fol. 212] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1951

[Title omitted]

ORDER ALLOWING CERTIORARI—March 10, 1952

On petition for writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 643 and placed on the summary docket.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 213] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 643

[Title omitted]

STIPULATION—April 12, 1952

It is stipulated by and between Counsel for Petitioner and Counsel for Respondent that the portion of the record in the appeal of the above entitled matter to be printed for the hearing of this case on the merits shall consist of the following:

From Volume I of the Record in United States Court of Appeals for the Fourth Circuit

- | | |
|---|-----------|
| I. Petition to District Court for Writ of Habeas Corpus | pp. 6-18 |
| II. Answer to Petition for Writ of Habeas Corpus | pp. 21-28 |

- III. Return to Writ of Habeas Corpus in District Court and the following Exhibit which by Reference is made a part of the Return: pp. 34-35
- EXHIBIT NO. I. Certified Copy of Judgment of Death in State Trial Court p. 36
- IV. Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus before District Court pp. 37-39
- V. Transcript of Evidence in District Court in its Entirety, including Index Thereof p. 92

From Volume II of the Record in the United States Court of Appeals for the Fourth Circuit

- VI. Findings of Fact and Conclusions of Law of District Court pp. 79-82
- VII. Memorandum Opinion of District Court pp. 67-77
- VIII. Order of District Court Denying Petition for Writ p. 83

[fol. 214] From Brief of Respondent-Appellee and Appendix, United States Court of Appeals for the Fourth Circuit, No. 6331.

- X. Appendix to Respondent-Appellee's Brief in its entirety pp. 32-70

This the 12th day of April, 1952.

Herman L. Taylor, Counsel for Petitioner. Harry McMullan, Attorney General of North Carolina; Ralph Moody, Assistant Attorney General; R. Brookes Peters, Jr., General Counsel of State Highway & Public Works Commission, Counsel for Robert A. Allen, Respondent.

